

*United States Court of Appeals
for the Second Circuit*



APPENDIX

76-1394
Docket No. T-6433

In The
United States Court of Appeals
For the Second Circuit

B
P/S

UNITED STATES OF AMERICA,

Respondent,

— vs. —

FLORIAN KAZMIERCZAK,

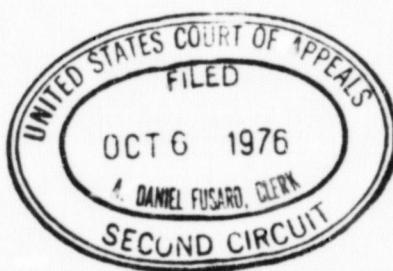
Appellant.

On Appeal From The United States District Court
For The Western District of New York

APPELLANT'S APPENDIX

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DOCKET ENTRIES.

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

D. C. Form No. 10-1000.

JOHN O. HENDERSON

JOHN O. CONDON

C.R. - 1-173-1-3

TITLE OF CASE
THE UNITED STATES

For Plaintiff:

vs.
FLORIAN KAZMIERCZAK

did wilfully and knowingly attempt to evade income tax, by filing a false and fraudulent income tax, in violation of Section 7201, Title 26, U.S.C.

For Defendant:

CHARLES J. TELIBAUGH
John Condon, Esq.
Joseph Sedita, Esq.
John Condon, Esq. (trial
counsel)

Offense: 1966, 1967, 1968, 3 Cts.

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	FFC	DISP.
J.S. 2 mailed	Clerk				
J.S. 3 mailed	Marshal				
Violation	Docket fee				
Title 26					
Sec. 7201					

1973

PROCEEDINGS

Apr. 12	Filed Indictment
Apr. 12	J.S. 2 made
26	Defendant, being duly arraigned, enters a plea of not guilty--adj. to 6/15/73 for return of motions - deft. continued on own recognizance.
June 13	Filed Deft's notice of motion for bill of particulars, etc., ret. 6/14/1973
June 14	Deft's motion for bill of particulars, etc. adj. 7-26-73.
July 6	Filed Deft's notice of motion & affidavit to suppress -- ret 7/26/1973
July 26	REMARKS Return date for motions. Deft. has filed motions. Adj. to 8/2/1973 for Govt's response to Deft's motion.
July 31	Filed Govt's bill of particulars
July 31	Filed Govt's response to certain pre-trial motions made by the deft.
Aug. 2	Return date for motions. Court to set date for suppression hearing.
Aug. 8	Filed Order That the U.S. Atty. is directed to prepare and file a computation of Income based on bank deposits and expenditures similar to that made in U.S. v. Lawrence G. Jansen, Cr-1973-159. this material shall be filed and supplied to the defense not

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DOCKET ENTRIES

DATE	PROCEEDINGS
<u>1973</u>	
Aug. 8	later than Sept. 13, 1973. An omnibus hearing is set for 10/15/1973, at 10:00 a.m. --CURTIN, J.
Oct. 15	The Court schedules suppression hearing - 10/23/1973, and the Govt. is to advise Deft.
Oct. 23	Govt. requested a date be set for a suppression hearing - the Court will advise counsel.
Nov. 5	Adj. to 11/12/1973
Nov. 12	Suppression Hearing - Govt. rested. Deft. has to prove - Deft. received permission to file a brief on completion of transcript by the reporter.
Nov. 15	Filed Ct. Steno's transcript of proceedings held before Judge Henderson, on Nov. 12, 1973
<u>1974</u>	
Feb. 22	Filed Govt's motion to move action for trial.
Apr. 8	Return date for brief - submitted
Apr. 29	Return date for briefs - submitted.
July 23	Deft's motion to suppress certain statements made by him to Internal Revenue agents is denied; CURTIN, J.
Sept. 30	Determination of counsel. Adj. to 10/15/74. Deft. to appear with counsel
Oct. 15	Determination of Counsel - Atty. John Condon advised the Court arrangement have not been completed for his retention as Atty.; Adj. 11/4/74
Nov. 4	Determination of Counsel. Deft. present in Court, informs Judge Curtin, that Joseph Sedita, Esq., and John Condon, Esq., will represent him, Mr. Condon being trial counsel. Adj. 12/2/74 for motions.
Dec. 2	Motions - Referred to Magistrate for Discovery and Bill of Particulars motions.
Dec. 6	Filed Govt's response to certain further pre-trial motions filed by the defendant
Dec. 17	Proceedings before the Magistrate - Adj. to 12/31/74-- for argument.
Dec. 31	Proceedings before the Magistrate - No appearance for deft. Adj. to 1/14, for argument at the request of the attys.
<u>1975</u>	
Jan. 14	Proceedings before the Magistrate - Argument on motion for inspection of Grand Jury minutes or "in camera" inspection - denied
Feb. 18	Filed Copy of Transcript of Argument on Defendant's motion before U.S. Magistrate Edmund F. Maxwell, taken on January 14, 1975.
Feb 18	Status report. Govt is to make a list of materials that will be available for deft's inspection. Adj. to 3/17 for return of any motions deft may wish to make (to the Court)
Mar. 14	Filed Govt's statement dated 3/14/75 of items supplied to the attorneys for the Deft. as a result of various discovery motions made to date
Mar. 17	Return date for deft's motions. No appearance for deft. Court will make a pretrial order.
Mar. 19	Filed Government's statement of items delivered to Defendant
May 2	Filed order that those portions of Deft's motion requesting examination of minutes of the Grand Jury and Dismissal of Indictment are denied, with leave to resubmit such motions at a time subsequent to the completion of pretrial discovery, and that those requests for discovery and inspection of physical materials as set forth in the affidavit of John W. Condon, dated 11/26/74, paragraph 26, subparagraphs a thru b, are granted, with instructions to the Govt to permit photostatic copying of same for use by deft. MAXWELL, Mag.

DOCKET ENTRIES

U.S. v. Florian Kazmierczak
CRIMINAL DOCKET

Cr-1973-160

DATE	PROCEEDINGS
<u>1975</u>	
May 19	Pretrial conference. Adj. to 5/27/75
July 2	Filed Deft's Supplemental Affidavit
July 8	Filed Order that defendant's request for inspection of the grand Jury minutes be and the same hereby is denied, and it is further ordered, that the defendant's motion to dismiss the Indictment be and the same hereby is denied.--CURTIN, J.
July 7	Pre trial conference held in the above case. Motion by deft to dismiss the indictment. Motion denied.
July 8	Filed Order denying Deft's motion to dismiss the Indictment--CURTIN, J.
Aug. 7	Filed letter dated 8/6/75 from AUSA Roger P. Williams to the Court, informing the Court that the Govt. assumes according to the representations of Atty. John Condon, that the defense will propose stipulations in certain areas.
Aug. 11	Return date for statement to be filed by USA. Adj. 9/22/75 for filing of stipulation and meeting with court at 2:00 P.M.
Sept. 22	Pre trial meeting held. Adj. to 10-28-75 for further pre trial
Oct. 28	Pre-trial conference. Adj. to 11/10/75
Nov. 10	Pre-trial conference held in the above case. Court sets trial for January 6, 1976. Further pre-trial conference to be held December 17, 1975 at 9:00 a.m.
Dec. 29	Filed three subpoenas D.T for Robert Clark, Warren Rothfuss, and Dennis Vasser, all served on 12-23-75
Dec. 29	Pre trial conference held in above case.
Dec. 30	Meeting with Court. Defendant agrees to an adj. of trial which was scheduled to commence on January 6, 1976.
<u>1976</u>	
Jan. 9	Filed 10 subpoenas for Wm. Hengerer Dept., Kleinhans Dept., Adam Meldrum & Anderson Co., Blue Cross, Travelers Insurance Co., Knights of Columbus, Raymond Gajewski, Mutual of Omaha, Central Wall & Floor Co., and Transfiguration Church, all served on 1/7/76
Jan. 12	Filed seven subpoenas for Dowd Rental Service & Sales, Hens & Kelly Co., Prudential Insurance Co., Sears, Roebuck & Co., Millard Fillmore Hospital, Automobile club of buffalo, and De George Ceiling Company, all served on 1-7-76
Jan. 12	Filed subpoena for The concord Hotel, served on 1-7-76
Jan. 14	Filed Four subpoenas (D.T.) - Suburban Home Designers, Edward D. Eshner, M.D., served 1/9/76; Sattlers, served 1/12/76; Shields & Co., served 1/13/76
Jan. 19	Filed subpoena for Allen Goldfarb, M.D., served on 1/13/76
Jan. 20	Filed two subpoenas for George Zimmerman, and Art Moyer served on 1-16-76

DC-100

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DOCKET ENTRIES.

DATE 1976	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Jan. 22	Filed Three subpoenas (D.T.) - Expert service Co., served on Ray Anger - 1/20/76; Eugene R. Mindell, M.D., served 1/20/76 on Diane Wachec, Sect.; Thomas K. Terrell, M.D., ret. no-service		
Feb. 3	Filed Deft's Trial memorandum and requested examination of Jurors		
Feb. 5	Filed Govt's requested voir dire		
Feb. 6	Filed Govt's trial memorandum		
Feb. 6	Govt. moves case ready for trial. Trial is adjourned until 2-11-76		
Feb. 11	Filed subpoena - George Zimmerman, served 2/9/76		
Feb. 11	Trial continues from February 6 with the same appearances and jury, with the exception that juror # 11 is absent because of illness and is replaced by alternate juror #1. Trial is adj. until tomorrow		
Feb. 12	Trial continues from 2-11-76 with same appearances and jury, Trial is adj to 2-17-76.		
Feb. 13	Filed Two subpoenas - Dolores Tramont, 67 Fair Oaks Lane, Cheektowaga, N.Y. served 2/11/76; Dolores Tramont, 977 Sycamore St., Bflo, ret. no-service		
Feb. 17	Trial continues from 2-12-76 with same appearances and jury. Trial adj. until 2-18-76.		
Feb. 18	Trial continues from yesterday with the same appearances & jury. Motions to dismiss the Indictment made by the deft. Decision reserved. Trial is adj. until to now		
Feb. 19	Trial continues from yesterday with the same appearances & jury. The jury retires to deliberate upon their verdict. The jury returns with following verdict: Count 1 - Not Guilty; Count 2 - Guilty; Count 3- Guilty. Sentence is deferred 3/29/76		
Feb. 23	Filed Deft's motion for Judgment of Acquittal - Memorandum Of Law		
Feb. 25	Motion by Deft pur. to rules 29 and 22 FRCP, for a new trial. Court extends time pur. to rules 29 & 30 so deft. can formalize motion Govt to file motion by 3/10/76; Govt. to answer 3/26/76; Oral argument 3/31/76.		
March 2	Filed Ct. Steno's. transcript of proceedings of trial before Judge Curtin and jury on 2-12-76 of Michael Pasquarella		
March 2	Filed Ct. Steno's transcript of testimony of witness Dolores Tramont before Judge Curtin on 2-12-76		
March 2	Filed excerpt of proceedings of trial (defense motions) held before Judge Curtin and jury on 2-18-76.		
March 2	Filed transcript of Summation of Roger Williams in trial proceedings before Judge Curtin and jury on 2-18-76		
March 2	Filed transcript of closing argument of John Condon in trial proceedings Judge Curtin and jury on 2-18-76		

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DOCKET ENTRIES.

. Florian Kazmierczak

Cr-1973-169

CRIMINAL DOCKET

DATE	PROCEEDINGS	CHARGE NUMBER
1976		
March 2	Filed transcript of opening statement of John Condon in trial proceedings before Judge Curtin and jury on 2-11-76	
March 2	Filed transcript of charge of the court in proceedings of trial before Judge Curtin and jury on 2-19-76	
Mar. 19	Filed Deft's notice of motion for an order granting a judgment of acquittal or a new trial, etc., ret. 3/31/76	
Mar. 19	Filed deft's memorandum in support of motion for Judgment of acquittal and/or a new trial (brief)	
Mar. 22	Filed Ct. Stenographer's transcript of the excerpt of proceedings of trial held before Judge Curtin, and a Jury on 2/11/76	
Apr. 8	Filed Govt's memorandum	
Apr. 27	Oral argument on motions. Adj. 5/13/76	
May 10	Filed Defendant's Reply Memorandum	
May 13	Motion by Deft. for acquittal and for a new trial and to set aside the Jury verdict. Oral argument held. Submitted.	
June 3	Filed/letter dated 6/3/76 from Ct. Reporter Elgene F. Koisley to Roger P. Williams, John W. Condon, Attys. for the Govt., and Deft., informing them to correct there copies of the Charge of the Court Page 16, Lines 22 and 23	
July 2	Filed Decision and Order denying deft's motions for a new trial or granting a judgment of acquittal--Curtin, J.	
Aug. 5	Filed Deft's pre-sentencing memorandum	
Aug. 11	Defendant is sentenced as follows: Defendant is fined \$1,000 on Count Two and \$1,000 on Count Three. The sentences are to run concurrently. Defendant shall have Sixty(60) Days to pay the fine. CURTIN, J.; Deft. was found not guilty on Ct. 1	
Aug. 17	Filed Judgment. CURTIN, J.	
Aug. 20	Filed deft's notice of appeal. Copies mailed to CCA along with form A and docket entries.	

INDICTMENT.

In the District Court of the United States

For the Western District of New York

THE UNITED STATES OF AMERICA

-vs-
FLORIAN KAZMIERCZAKMARCH 1973 SESSION XXXXX

No. 1973 103

Via. T. 18, U.S.C.,
Section 7201COUNT I

The Grand Jury Charges:

That on or before the 15th day of April, 1967, in the Western District of New York, the defendant, FLORIAN KAZMIERCZAK, did willfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1966, by filing and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of Buffalo, New York, a false and fraudulent income tax return wherein he stated that his taxable income for said calendar year was the sum of \$6,124.49 and that the amount of tax due and owing thereon was the sum of \$1,023.65, whereas, as he then and there well knew, his taxable income for the said calendar year was the sum of \$14,148.35, upon which said taxable income he owed to the United States of America an income tax of \$2,797.09; Section 7201, Internal Revenue Code; 26 United States Code, Section 7201.

COUNT II

The Grand Jury further charges:

That on or about the 15th day of April, 1968, in the Western District of New York, the defendant, FLORIAN

INDICTMENT.

KAZMIERCZAK, did willfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1967, by filing and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of Buffalo, New York, a false and fraudulent income tax return wherein he stated that his taxable income for said calendar year was the sum of \$4,057.99 and that the amount of tax due and owing thereon was the sum of \$631.02, whereas, as he then and there well knew, his taxable income for the said calendar year was the sum of \$23,083.99, upon which said taxable income he owed to the United States of America an income tax of \$4,954.43; Section 7201, Internal Revenue Code; 26 United States Code, Section 7201.

COUNT III

The Grand Jury further charges:

That on or before the 15th day of April, 1969, in the Western District of New York, the defendant, FLORIAN KAZMIERCZAK, did willfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1968, by filing and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of Buffalo, New York, a false and fraudulent income tax return wherein he stated that his taxable income for said calendar year was the sum of \$3,657.56 and that the amount of tax due and owing thereon was the sum of \$602.79, whereas, as he then

INDICTMENT.

and there well knew, his taxable income for the said calendar year was the sum of \$12,993.16, upon which said taxable income he owed to the United States of America an income tax of \$2,637.52; Section 7201, Internal Revenue Code; 26 United States Code, Section 7201.

JOHN T. ELFVIN
United States Attorney

A TRUE BILL:

John T. Elfvin
Foreman

INDICTMENT

Form DJ-195
(Ed. 2-7-64)

281373 129

UNITED STATES DISTRICT COURT

WESTERN District of NEW YORK

EDWARD

THE UNITED STATES OF AMERICA

vs.

FLORIAN KAZMIERCZAK

INDICTMENT

At this date,

Cathleen Stewart

Prosecutor

Filed in open court this 6th day
of January, A. D. 1973

Clerk

Beth, C.

TRIAL TESTIMONY OF 2-12-76.
Michael Pasquarella for Government, Direct
by Mr. Williams.

2

MICHAEL A. PASQUARELLA, J.R.

(244 Presidio Place, Williamsville, New York), a witness called by and in behalf of the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. WILLIAMS:

Q. Mr. Pasquarella, are you married, sir?

A. Yes, I am.

Q. All right. Mr. Pasquarella, Mr. Condon indicated you were a graduate of Canisius College, is that correct?

A. Yes, I am.

Q. Okay. When did you graduate?

A. 1961.

Q. All right. Can you tell us what you have done since that time?

A. After graduation from college, I served two years in the United States Army. I taught school for two years and then in July of '65 I started to work with the Internal Revenue Service.

Q. Have you been with the IRS since that time in 1965?

A. Yes, I am.

Q. What is your present position with the Internal Revenue Service?

A. I am a Special Agent with the Intelligence Division of the Internal Revenue Service.

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Trial Testimony of 2-12-76.
Michael Pasquarella for Government, Direct
by Mr. Williams.

Q How long have you been a special agent?

A About eight and a half years.

Q All right, sir. Will you tell us, briefly, about the functions of a special agent?

A One of the functions of a special agent is to investigate the possibility of criminal violations of the Internal Revenue Laws.

Q All right. Mr. Pasquarella, did you have occasion to conduct such an investigation relating to one Florian Kazmierczak?

A Yes, I did.

Q All right, sir, and when did you begin that investigation?

A I was assigned the investigation on September the 19th of 1969.

Q All right, sir, and subsequent to that time, did you have occasion or occasions to see Mr. Kazmierczak?

A Yes, I did.

Q All right, sir. When was the first time that you saw him?

A The first time I saw Mr. Kazmierczak was on October 6th of 1969.

Q All right, sir, and where did you see him on that date?

A I saw him at his place of business which is also his residence at 977 Sycamore Street.

Trial Testimony of 2-12-76
Michael Pasquarella for Government, Direct
by Mr. Williams.

Q. All right, and what, if anything, happened on that occasion?

A. On that occasion, Mrs. Catherine Tony, the Revenue Agent, introduced me to Mr. Kazmierczak. She gave him my name and I told Mr. Kazmierczak I wanted to speak to him. He said he was too busy and he asked me if I would come back the next day so we scheduled an appointment for the next day, October 7th at 10:00 a.m.

Q. All right, sir. Did you return at that time?

A. Yes, I did.

Q. All right, and did you have any conversation with Mr. Kazmierczak on that occasion?

A. Yes, I did.

Q. All right, sir, and do you see Mr. Kazmierczak here in the courtroom today?

A. Yes, I do.

Q. Would you point him out for me, please?

A. The gentleman sitting at the far table on the right with the grey suit and glasses.

Q. All right, sir, and tell us, if you will, Mr. Pasquarella, on October 7th, what, if anything, you said to Mr. Kazmierczak and what, if anything, he said to you?

A. I again introduced myself to Mr. Kazmierczak. I showed him my credentials which he examined. I told him I was

Trial Testimony of 2-12-76
Michael Pasquarella for Government, Direct
by Mr. Williams.

a special agent with the Intelligence Division of the Internal Revenue Service and that one of my functions as a special agent is to investigate the possibility of criminal violations of the Internal Revenue Laws. I also told him that I was assigned an investigation of his tax liability for the years 1965, 1966, 1967, and 1968. I explained to Mr. Kazmierczak that based on an audit made by Revenue Agent Tony, she had referred the case to the Intelligence Division and that the case was now assigned to me and that based on the audit that she had made, there was a tentative understatement of taxable income for each of the years 1965 through 1968. I told him that the investigation was now assigned to me and that Revenue Agent Tony would be there to assist me. I told him that it would be my job to find out if he did, in fact, understate his taxable income and if he had done this willfully, but before I asked Mr. Kazmierczak any questions, I told him that under the Fifth Amendment to the Constitution that he didn't have to answer any of my questions and he didn't have to submit any information to me. I also told him that if he did answer any questions that he did answer, any information that he did give me, that that same information could be used against him in any criminal proceeding which may be undertaken. I further advised Mr.

Kazmierczak that if he wanted to, he could request the assistance of an attorney before responding to any of my questions. I then asked him if he understood what I told him and he said he did.

Q All right, sir, and did you then ask him some questions?

A Yes, I did.

Q All right, sir. Tell us what, if any, questions you asked him and what, if any, responses he made to your questions?

A Mr. Kazmierczak told me he was born September 2, 1913. He married the former Julia Slowic in 1934. They have one child, Mrs. Dolores Tramont; that his residence is at 977 Sycamore and that his place of business was also at 977 Sycamore; that he has operated that business since about 1940 and that he was the sole owner of that business.

Q All right, sir. Did you ask any other questions?

A Yes. I asked him about his educational background.

Mr. Kazmierczak said that he reached the 6th Grade in elementary education. He also said he never took any accounting courses or tax courses and that he had never performed any military service and that he considered his general health condition as fair.

Q All right, sir. Did you ask him any other questions on that date?

Trial Testimony of 2-12-76.
Michael Pasquarella for Government, Direct
by Mr. Williams.

A Yes. I asked him what his sources of income were. He told me his sources of income were from his business and from interest and from dividends.

Q All right, sir. Any other questions you asked on that date?

A Yes. I asked him if his wife had any independent source of income and he said no, the only income that she would have would be the interest and dividends that they had in their joint names.

Q All right, sir. Go on, anything else said on that date?

A I then asked Mr. Kazmierczak what books and records that he kept in his business. Mr. Kazmierczak said that he maintained a gross receipts book in which he entered the daily receipts that he got from his business and he also maintained an expense book and he made the entries into the expense book as he incurred the expense.

Q All right, sir. Did you ask him any other questions?

A Yes, I did. I asked Mr. Kazmierczak questions regarding his 1967, - well, regarding his 1965, 1966, '67 and '68 tax returns. Mr. Kazmierczak said - -

MR. CONDON: I am sorry. I didn't hear the end.

1965 what?

THE WITNESS: 1966, 1967, 1968.

Michael Pasquarella for Government, Direct
by Mr. Williams.

THE COURT: Mr. Pasquarella, maybe you can keep
your voice up a little bit more and speak
a little bit slower.

BY MR. WILLIAMS:

Q All right, sir, and what, if anything, did you ask him
about the returns?

MR. CONDON: I am sorry. I have a little
difficulty. You asked him about those
years' tax returns?

THE WITNESS: Yes.

MR. CONDON: Thank you.

BY MR. WILLIAMS:

Q What did you ask him about the returns?

A I asked him who prepared them and Mr. Kazmierczak
said that - -

MR. CONDON: I am sorry. You asked him what?

THE WITNESS: Who prepared them.

MR. CONDON: I am objecting to anything about
1965, your Honor.

THE COURT: Mr. Williams, is it necessary that
we go into 1965?

MR. WILLIAMS: No.

THE COURT: All right.

BY MR. WILLIAMS:

Q Limiting, Mr. Pasquarella, to the years 1966, 1967 and 1968, you indicated you asked him who prepared the returns?

A Yes, I did.

Q All right. What, if anything, did he say?

A He told me that the 1966 and 1967 tax returns were prepared by a Mr. M. Kuzczko.

MR. CONDON: I am sorry "M" what?

THE WITNESS: Kuzczko.

THE COURT: Do you know how to spell that?

THE WITNESS: Yes. It is K-u-z-c-z-k-o.

BY MR. WILLIAMS:

Q Did he say anything about the 1968 return?

A Yes. He said that a Mr. Joseph Ciapkzik prepared his 1968 return. That is C-i-a-p-k-c-i-k.

Q And do you know, - if you know, do you know where Mr. Kuzczko and Mr. Ciapkzik are today?

A They are both deceased.

MR. CONDON: I am sorry. I didn't hear.

THE COURT: Mr. Pasquarella, you will have to speak louder. Mr. Pasquarella, move yourself up to the microphone and speak up.

BEST COPY AVAILABLE

Trial Testimony of 2-12-76.
Michael Pasquarella for Government, Direct
by Mr. Williams.

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MR. CONDON: Out of fairness, Mr. Pasquarella,

Mr. Williams' question I didn't hear.

THE COURT: Oh, Mr. Williams' question.

MR. WILLIAMS: I will repeat.

THE COURT: Mr. Williams, you remember your
back is to Mr. Condon and the others.

If you speak up, he can hear you, but you
let your voice drop.

MR. CONDON: It is my problem. I have difficulty
hearing.

THE COURT: Mr. Condon, I have difficulty, so
we are in, we are both in the same boat.
Speak up.

BY MR. WILLIAMS:

Q I will do my best. Mr. Pasquarella, do you know where
Mr. Kuzczko and Mr. Ciapkzik are today?

A They are both deceased.

Q All right, sir. Now, you indicated that you were
asking Mr. Kazmierczak about his returns for the years
'66, '67 and '68. Did you ask him any other questions
on that date?

A Yes, I did.

Q All right. Tell us which questions you asked him and
what, if any, answers you got?

Trial Testimony of 2-12-76.
Michael Pasquarella for Government, Direct
by Mr. Williams.

A I asked Mr. Kazmierczak regarding just general business procedures that he had used in his business. Mr. Kazmierczak told me that he had made a practice to cash checks for his customers, whether they be personal or payroll checks and he also accepted utility payments from his customers which he, in turn, would pay and he told me that he did this free of charge. He never charged a fee.

Q All right, sir. Did you ask any other questions of him on that occasion?

A Yes. I asked him about his assets and his liabilities and Mr. Kazmierczak told . that he has a checking account with, - just one checking account which he uses for both personal and business at the Marine Midland Trust Company; that he had a safe deposit box at the Marine Midland Trust Company; that he had savings accounts at Buffalo Savings and Erie County Savings Bank and that he owned about \$5,000 worth of stock and that he had about \$1,500 of U. S. Savings Bonds and that he owned property, the property at 977 Sycamore Street and there was no mortgage on it and that he also owned a 1965 Pontiac stationwagon at the time.

Q All right, sir. Did you have any other conversation with him on that date?

A Yes, I did.

Trial Testimony of 2-12-76.
Michael Pasquarella for Government, Direct
by Mr. Williams.

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Q All right, sir. Will you tell us what, if any, other questions you asked and what responses you got, if any?

A I asked Mr. Kazmierczak how much cash on hand that he had at anytime during the years 1964 through 1968.

I explained to him by cash on hand how much coin - -

MR. CONDON: Objecting to anything, your Honor,
other than 1966, 1967 and 1968.

THE COURT: It may be necessary. Mr. Williams,
is it necessary?

MR. WILLIAMS: Yes, I believe it is.

THE COURT: All right. I will overrule the
objection.

MR. CONDON: Most respectfully except.

BY MR. WILLIAMS:

Q Go ahead, Mr. Pasquarella.

A I explained to him, when I asked about cash on hand I said I am talking about coin or currency which he had on his person or in his household, but not any monies on deposit in any bank and Mr. Kazmierczak said that the most he ever maintained was \$1,500 cash on hand for business use which he kept in a box in the back of his store or in his apartment and the most he ever kept on hand for his own personal use was

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about \$400.

Q All right, sir. Anything further?

A I also asked Mr. Kazmierczak about the cashing of checks.

MR. CONDON: Pardon me. I am just, - is the witness reading from something?

BY MR. WILLIAMS:

Q Not to my knowledge. Are you reading from anything, Mr. Pasquarella?

A Am I what?

MR. CONDON: I was wondering if you were reading.

THE WITNESS: No, I am not.

MR. CONDON: Thank you.

BY MR. WILLIAMS:

Q Was there anything else said on that day?

A Yes, there were other things said. I just can't recall right now what specifically other things that were said.

Q All right. Mr. Pasquarella, did you at any time, prepare or make any notes or prepare any memorandum as a result of your conversations with Mr. Kazmierczak on that day?

A Yes, I did.

Q All right, and what did you do, what note or memorandum

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did you make?

A. I made a memorandum of interview.

Q. And when did you do that?

A. Right subsequently after the interview.

Q. Mr. Pasquarella, let me show you what is marked as
Government, - strike that, - Court Exhibit Number 1,
sir, and I ask you, do you recognize that?

A. Yes, this is my memorandum of interview of my
conference with Mr. Kazmierczak on October 7th.

MR. CONDON: I can't hear you.

THE WITNESS: This is my memorandum of conference
with Mr. Kazmierczak on October 7th, 1969.

MR. CONDON: Thank you.

BY MR. WILLIAMS:

Q. All right, sir, and who prepared that?

A. I did.

Q. Do you know when?

A. This would be either on the day or the very next day.

Q. All right, sir. Will you take a look at that and
I want you to tell me whether or not that refreshes
your recollection of any other conversations on that
day?

A. Yes, it does.

Q. All right, sir. Tell us, if you now recall, what, if

any, other questions you asked and what, if any, other answers you got?

A Again, in conjunction with me asking Mr. Kazmierczak about his assets, he did tell me that he has insurance policies that he pays approximately eleven to twelve hundred dollars a year and that he has that insurance with Prudential and the Metropolitan Life Insurance Company. He also told me that every week he would give his wife \$90 cash per week for personal and, - for personal and household expenses. He also told me that any cash business expense that he paid he would not pay out of the cash register but that he would take the \$50, for example, if he paid a \$50 cash expenditure, he would take the money out of the box and not out of the cash register and I also asked him for an explanation of this understatement, of this tentative understatement of income for years 1966, '67 and 1968 and he didn't, - he said he didn't think he did anything wrong, as far as he knew, he recorded all the income that he received and he did tell me, though, that he remembers he thought one of his former part-time employees pilfering from the cash register and then admitted that the employee could not have stolen more than \$100.

Q Mr. Pasquarella, did you ever ask Mr. Kazmierczak his

source of the \$90 cash that you testified about a few moments ago?

A. Yes, I did. He said he got the \$90 cash that he gave his wife every week from the business receipts.

Q. All right, sir. Did you ever ask him any questions about taking vacations?

A. Yes, I did. Mr. Kazmierczak did take winter vacations in the year 19 - -

Q. Dealing with either 1966, 1967 or 1968?

A. In the year 1967 and it cost him approximately \$600.

Q. Did he tell you where he went?

A. He went to Florida.

Q. Okay. Now, did you have a later occasion to see Mr. Kazmierczak?

A. Yes, I did.

Q. When was the next time you saw him?

A. I saw Mr. Kazmierczak the very next day, but I did not have an interview with him. I just picked up some records.

Q. All right, sir. This would have been on October the 8th?

A. Yes.

Q. All right. What records did you pick up?

A. Well, getting back to October the 7th, I picked up

records also on October 7th.

Q I see. What records did you pick up on October 7th?

He gave me some saving account passbooks. He also gave me his gross receipts book and his expense book.

Q All right, sir. On, - this is on October 7th?

A Yes.

Q All right, sir.

A And then also on October 7th in the same, in the afternoon, - not at that morning conference, but in the afternoon I went back and I picked up more records and those would be the invoices for all his expenses for the years 1966, 1967 and 1968.

Q All right, sir. On October 7th, did you ask him any questions about making entries in either of those books?

A Yes, I did.

Q All right. Tell us about that.

A Mr. Kazmierczak said that he was the only person who made the entries in the gross receipts book and in the expense book.

Q I see. Now, can you describe for us, this gross receipts book that you picked up?

A Yes, I can. It is a, - the book itself was, dimension wise, about, I would say, about eighteen inches long and about eighteen inches high and it was a bound book

which included the years prior to the years that I was interested in, but it was all in one book.

Q All right, sir. Do you recall the color of the book?

A I believe it had, - it was a grey cover.

Q All right, sir. You said prior years. How far back did it go, do you recall?

A I believe it went back to 1961.

Q All right. Now, you said you picked up some other books and records that day?

A Yes, I also picked up his expense book.

Q All right, sir. Now, can you describe this expense book?

A Yes, for the years 1966, 1967 and 1968, it was a separate book for each year and it was in a green hard cover bound book.

Q All right. Did you have any, - can you tell us about the size of that book or those books, I should say.

A I would say it would be a book about the size of this yellow pad, maybe just an inch or two longer, but about the same size as far as the width.

Q All right. I think that is about eight and a half inches in width, would that be about the size?

A Yes, I would say about eight and a half by fourteen or so.

Q All right.

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MR. CONDON: Pardon me.

THE COURT: Mr. Condon, you will have an opportunity to examine.

MR. CONDON: Thank you very much, your Honor.

I just wanted to see what he was reading from.

THE WITNESS: Excuse me, your Honor. This was here when I got here.

THE COURT: Whatever the pad is, can you just hand it up. It was left by some other witness. All right. Thank you.

BY MR. WILLIAMS:

Q. Mr. Pasquarella, did you determine, - were you able to determine on that day or any other day whether or not Mr. Kazmierczak ever had any employees?

A. Yes. He told me that he had employees.

Q. All right, and did you have any conversations with him about that? Let me phrase it another way. Did you have any conversations with him regarding preparation of payroll records or any forms relating to employees?

A. Yes, I did. He told me that he personally prepared the 941 quarterly tax returns which were due every quarter because he was the employer and he prepared

the returns.

Q Now, I think you indicated that you had some conversation with him about the so-called gross receipts book; this was on October 7th?

A Yes.

Q All right. Did you ask him anything about how he made entries in the book?

A Yes. I asked him how he made the entry and he said that he would be the person who made the entry into the book. In other words, at the end of the day, after he would count the money in the cash register, subtract what he had started with to make change and that that figure would be the figure that he would enter into the gross receipts book for that day.

Q All right, sir. Now, Mr. Pasquarella, what, if anything, did you do with this gross receipts book and these expense books that you picked up on that day?

A I made copies of them.

Q All right, sir, and what, if anything, did you do with the books that you picked up from Mr. Kazmierczak on that day?

A I returned them.

Q All right, sir. Mr. Pasquarella, I am now going to show you what is marked as Government Exhibit 11, sir. I ask if you recognize that?

A. Yes. These are the copies of the gross receipts book that I made.

Q. All right, sir. I now show you what is marked as Government's Exhibit Number 12 for identification and I ask you if you recognize that?

A. Yes. These are the copies of the expense book for the years 1966, 1967 and 1968, that I made.

Q. All right, sir, that you made from what?

A. From his original 1966, 1967 and 1968 expense book.

Q. All right, sir. Now, I think you said you saw Mr. Kazmierczak the next day on October 8th?

A. Yes.

Q. And that you picked up some records on that day?

A. Yes, I did.

Q. All right. Now, when was the next time you saw him?

A. The next time that I saw Mr. Kazmierczak was on October 24th of 1969.

Q. All right, sir, and where did you see him on that occasion?

A. Again at his residence, 277 Sycamore Street.

Q. All right, and did you have any conversation with him on that day?

A. Yes, I did.

Q. All right, sir. Can you tell us what, if anything, he said, and what, if anything, you said?

A. Yes. I asked Mr. Kazmierczak to explain to me again how he recorded his gross receipts. Mr. Kazmierczak said that he at the end of the day, he would count the money in the cash register; he would subtract what he had started with to make change and that would be the figure that he would enter into the gross receipts book. I also asked Mr. Kazmierczak to explain to me how he handled the cashing of checks and the payment of business expenses. I gave him an example. For example, if an individual came in with a payroll check for \$50, what would you do when you cashed it. Mr. Kazmierczak said he would take the individual's check, give the individual \$50, but that that \$50 would come out of the box where he maintained that \$1,500 cash on hand and then he said at the end of the day, he would take the \$50 out of the cash register and replenish his cash on hand so as to maintain the \$1,500 cash on hand every day.

Q. All right, sir.

A. I also asked Mr. Kazmierczak how he handled a cash purchase. For example, if a truck driver came in and the goods that he purchased cost \$50 and he paid \$50 in cash. He said he would take the \$50 out of that same box and at the end of the day, he would take \$50 out of the cash register and replenish it so that he

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would constantly maintain the \$1,500 cash on hand.

I also asked Mr. Kazmierczak what he did with these cash receipts that he took in from his business. Mr. Kazmierczak said that with the cash that he received from his business, he would pay, - either pay cash for his expenses, he would pay, and he would also pay his employees cash and that he also gave his wife the \$90 a week.

Q All right, sir.

MR. CONDON: I am very sorry. Can I ask to repeat that, please?

THE WITNESS: Repeat it. I asked Mr. Kazmierczak to explain to me what he did with the cash that he received every day, his normal business receipts, what did he do with that cash and Mr. Kazmierczak said that he paid for some cash business expenses, that he paid his payroll in cash and that he gave his wife \$90 a week out of that cash.

MR. CONDON: Your Honor, I ask for indulgence. There were two \$50 examples and I didn't hear all of the second one, and I would be very grateful if I could hear the second one he gave.

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THE COURT: You didn't hear the witness, Mr.
Condon?

MR. CONDON: Yes, I didn't hear the total example.

THE COURT: Again, Mr. Pasquarella, you do tend
to speak a little fast. If you speak a
little slower and keep your voice up, it
will help. Mr. Knisley, could you go back
a few questions and answers, please, and
reread to us the questions and answers,
maybe go back four questions.

(The following was read by the
stenographer:

"Q All right, sir, and where did you
see him on that occasion?

A Again at his residence, 977 Sycamore
Street.

Q All right, and did you have any
conversation with him on that day?

A Yes, I did.

Q All right, sir. Can you tell us
what, if anything, he said and what, if
anything, you said?

A Yes. I asked Mr. Kazmierczak to
explain to me again how he recorded his

gross receipts. Mr. Kazmierczak said that he, at the end of the day, he would count the money in the cash register; he would subtract what he had started with to make change and that would be the figure that he would enter into the gross receipts book. I also asked Mr. Kazmierczak to explain to me how he handled the cashing of checks and the payment of business expenses. I gave him an example. For example, if an individual came in with a payroll check for \$50, what would you do when you cashed it. Mr. Kazmierczak said he would take the individual's check, give the individual \$50, but that that \$50 would come out of the box where he maintained that \$1,500 cash on hand and then he said at the end of the day, he would take the \$50 out of the cash register and replenish his cash on hand so as to maintain the \$1,500 cash on hand every day.

Q All right, sir.

A I also asked Mr. Kazmierczak how he handled a cash purchase. For example,

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if a truck driver came in and the goods
that he purchased cost \$50 and he paid
\$50 in cash. He said he would take the
\$50 out of that same box and at the end
of the day, he would take \$50 out of the
cash register and replenish it so that
he would constantly maintain the \$1,500
cash on hand. I also asked Mr.

Kazmierczak what he did with these cash
receipts that he took in from his business.

Mr. Kazmierczak said that with the cash
that he received from his business, he
would pay, - either pay cash for his
expenses, he would pay, and he would also
pay his employees cash and that he also
gave his wife the \$90 a week.

Q All right, sir.")

MR. CONDON: Thank you very, very much.

THE COURT: All right.

BY MR. WILLIAMS:

Q Mr. Pasquarella, did you have any other conversation
with Mr. Kazmierczak on that occasion?

A Yes, I did. I also asked him what he did with the

checks that he did cash. That is, the payroll checks or the personal checks and the cash that he collected from the people whose utility payments he would take. He said that that money and those checks he would deposit to his checking account.

Q All right.

A I also asked Mr. Kazmierczak if there was, - if he had any other explanation for this tentative under-statement of income and I specifically asked him if there were any other expenses that I would not be aware of at that time and he said that all his expenses are recorded in the book that he gave me and that there would be no other expenses.

Q All right, sir. Anything else before you left that day?

A Yes. I did ask Mr. Kazmierczak for permission to inventory the contents of his safe deposit box. He said that he would call me and he would schedule an appointment at his convenient.

Q All right, sir, and did Mr. Kazmierczak ever call you after that date?

A No, he didn't.

Q Now, let me show you, Mr. Pasquarella, what is marked as Government Exhibit Number 14 for identification, sir, and I ask if you can tell us what that is, what is

contained in that exhibit?

A. This is an income tax form, Form 941. It is an employer's quarterly Federal Tax Return.

Q. All right. Does that, - is that the original or a copy?

A. This is a copy.

Q. All right, sir, and where is the original? Do you know?

A. The original would be on file with the Internal Revenue Service.

Q. All right. Where did you obtain that?

A. I obtained this from Mr. Zimmerman.

Q. All right, sir, and when did you obtain this?

A. I photocopied them on December 2, 1969. I believe I got them right on that same day, on December 2nd of '69.

Q. All right, sir. Now, what did you do with, - strike that. What did you photocopy?

A. Well, when I, - when Mr. Zimmerman gave me these records, this record, this photocopy is a copy of Mr. Kazmierczak's retained copy.

Q. All right, sir.

A. Which was in the possession of Mr. Zimmerman. I went to Mr. Zimmerman's office and I saw the retained copies that he had and he gave me a copy of Mr. Kazmierczak's copy.

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Q All right. In other words, you copied that and gave those retained copies back to Mr. Zimmerman?

A Yes. I never took them from his office.

Q All right. Now, Mr. Pasquarella, did you ever talk, - in connection with the investigation, did you ever talk to an individual named Dolores Tramont?

A Yes, I did.

Q Did you have occasion to see her on May 28th of 1970?

A Yes, I did.

Q And where was that?

A At the office of the Internal Revenue Service.

Q All right, sir, and what happened on that occasion?

MR. CONDON: I am sorry. I am going to object to this, your Honor.

THE COURT: I will sustain the objection unless cause can be shown why we should listen to it. It is hearsay as to the defendant.

BY MR. WILLIAMS:

Q Mr. Pasquarella, did you show her anything on that occasion?

A Yes, I did.

MR. CONDON: Same objection, your Honor.

THE COURT: Did he show something to her, I will overrule the objection to that.

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MR. CONDON: Exception.

THE COURT: The answer is "yes"?

THE WITNESS: Yes, I did.

THE COURT: Next question.

BY MR. WILLIAMS:

Q What, if anything, did you show her on that date?

MR. CONDON: Objection.

THE COURT: I will overrule the objection,

although, perhaps we might solve this quickly by stepping over to the side here.

Mr. Knisley.

(Sidebar conference held as follows:

THE COURT: Mr. Williams, is this the civil
schedule?

MR. WILLIAMS: No, no.

THE COURT: All right.

MR. WILLIAMS: What he did was this, your Honor, he took the gross receipts book he picked up from Mr. Kazmierczak, the expense book he picked up from Mr. Kazmierczak and asked her if she ever saw them before and he asked a question, "Can you describe the book in which you made the notation

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of gross receipts each day", and she said
it was a stenographer's notebook and he
had a stenographer's notebook and said,
"Is it a book like that", and she said,
"Yes".

THE COURT: I can see why you wanted her to
testify first, but I think for the present,
we can have the showing. That I will
permit, but not as far as any conversa-
tion.

MR. WILLIAMS: No, no conversations.

THE COURT: Just as to the book.

MR. WILLIAMS: Yes.

THE COURT: "Do you recognize this book".

MR. WILLIAMS: Yes.

THE COURT: The plan is that you will connect
it up later?

MR. CONDON: I think also what Roger mentioned
is Mr. Pasquarella or someone there had
a book like this, a stenographic notebook.

MR. WILLIAMS: Yes.

THE COURT: And he asked her to identify if she
had seen a book something like that and
I understand your plan is to ask him this
now if something he had she had seen

something like it.

THE COURT:

I suppose what we can do is have her come over and have her testify and then it would be more direct.

MR. CONDON:

All right.

THE COURT:

He is not going into extensive conversation.

MR. CONDON:

Not going into any conversation, just into what was done.

MR. WILLIAMS:

Yes.

MR. CONDON:

Okay, all right.

(Sidebar conference concluded.)

BY MR. WILLIAMS:

Q Let me start again, Mr. Pasquarella. On May 28 of 1970, did you have occasion to show or exhibit to Dolores Tramont any items or anything?

A Yes, I did.

Q what did you show her?

A I showed her this book.

Q Now, this is marked Government Exhibit Number 15.

A Yes.

Q All right, and did you show her anything else on that day?

A Yes, I did. I showed her the gross receipts book that Mr. Kazmierczak had given me and I also showed her the expense books that Mr. Kazmierczak had given me.

Q All right. Do you recall whether, with respect to the gross receipts book and expense book, whether you showed her the ones that Mr. Kazmierczak gave you or the copies that you made?

A I showed her the copies that I had made because I had already returned the originals to Mr. Kazmierczak.

Q All right, sir. Let me again show you, sir, what is marked as Government Exhibit Number 11, that you have identified before. Is that what you showed her on that day?

A Yes, I did. I showed her this, these pages which I photocopied from the original book that Mr. Kazmierczak had given me on October the 7th of '69.

Q All right, sir, and now let me show you Government Exhibit Number 12. Did you show that to her on that day?

A Yes, I did.

Q All right, sir, and can you tell us whether or not what you showed her is in the same form as it is today?

A Yes, it is. These are the individual pages of the bound expense book that Mr. Kazmierczak had given me on October the 7th of 1969.

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Q. All right, sir. I have no more questions of Mr. Pasquarella.

MR. CONDON: May I just have a moment, your Honor?

THE COURT: Surely. Mr. Condon, do you think maybe five minutes?

MR. CONDON: I think that would be very helpful, your Honor.

THE COURT: Ladies and gentlemen, will you step downstairs for a few minutes and we will have you back in about five minutes.
In the meantime, we will be in recess.

(Recess taken at 11:35 a.m.)

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PROCEEDINGS: After recess, 11:47 a.m.

APPEARANCES: As before noted.

(Defendant present.)

(Jury present.)

(Defendant's Exhibits Numbered
2 through 11, respectively and inclusive,
marked for identification.)

M I C H A E L A. P A S Q U A R E L L A, J R., a witness
called by and in behalf of the Government, having been
previously duly sworn, resumed the witness stand and testified
further as follows:

CROSS EXAMINATION BY MR. CONDON:

THE COURT: Mr. Condon.

BY MR. CONDON:

Q Thank you very much, your Honor. Mr. Pasquarella,
in this matter, sometime in 1973, did you have the
* occasion to testify in the grand jury?

A The grand jury?

Q Yes.

A No, I did not.

Q We have established, I believe, you graduated from

Canisius College.

A. Yes, I have.

Q. And I wonder if you could, - pardon me just a moment,
if I may. Did you have a major there?

A. Yes.

Q. And what was that, please?

A. Business Administration. I majored in management.

Q. Pardon me?

A. I majored in management.

Q. Business management?

A. Yes.

Q. Now, I understand from what you say that then you
spent some time in the army?

A. Yes, two years in the service.

Q. I see. You were an officer?

A. Yes.

Q. And what particular branch was that?

A. The Adjutant General Corps of the Army.

Q. Did that have anything to do with your training in
management and accounting?

A. No.

Q. All right. Now, also that you taught school?

A. Yes, I did.

Q. Where did you teach?

A. The first year I taught at Fosdick-Masten Girl's

Vocational School and the second year I taught at
East High School.

Q. And what did you teach?

A. At Fosdick-Masten, I taught World History and at
East High School, I taught high school economics.

Q. All right, and those were the only two subjects you
taught?

A. Yes.

Q. Now then, as I recall in about, and I don't have it
handy here, after you finished your army service
and teaching, it was in 1965 you joined the IRS?

A. Yes.

Q. And were you a Revenue Agent at that time?

A. No, I was not. I was, - my title was tax technician.

Q. I see, and could you briefly tell us what your duties
were at that time?

A. Yes. I used to conduct audits of individual tax
returns, not businesses, just individuals.

Q. And for how long did you do that?

A. For two years.

Q. And, Mr. Pasquarella, did you have any additional
academic training after you received your degree from
Canisius; did you pursue any further studies?

A. No, I didn't.

Q. And that after you finished the two years being a tax

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technician, what did you do?

A. Then I became a special agent with the Intelligence Division.

Q. And was that another examination or appointment?

A. Yes, it was.

Q. It was an examination?

A. Yes, sir.

Q. And was there any special training you had to go through for that to prepare yourself for that examination?

A. Not for the examination. I took the examination and then I went to school.

Q. I see, and where was this?

A. In Washington, D. C.

Q. And for how long did you attend that school in Washington, D. C.?

A. Well, there were two separate schools, each of which lasted five to six weeks each.

Q. And did you take them in succession?

A. Not exactly. There was a break of about six months between the two of them.

Q. All right, and could you tell us what the training was that you received at those schools?

A. Yes. The first one I believe I attended in April of '68, the Treasury Law Enforcement School in Washington, D. C. It was a course wherein we qualified with

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weapons. We also took courses in evidence procedures, interviewing people and conducting raids and surveillance and things of that nature. It was geared primarily to the law enforcement part of my job.

Q. Was that the first - -

A. Yes.

Q. Bit of training you received as a special agent?

A. Yes.

Q. And would you recall, approximately, how much time was spent on weaponry?

A. On weaponry?

Q. Yes.

THE COURT: This is all interesting, Mr. Condon, but does it have anything at all to do with this case?

MR. CONDON: I don't think, your Honor, as such. It has to do with his background.

THE COURT: He has received training in many fields. If the point here is that he is called - -

MR. CONDON: Well, maybe I can withdraw the question, your Honor, and put it another way.

THE COURT: Primarily, I suppose his expertise in accounting or - -

MR. CONDON: Specifically, your Honor, I am interested not only in that, but his expertise in evidence and in procedure such as interviewing, memorandums and things of that nature, if I may inquire, so putting it on the other end, how much time was spent on legal procedures?

THE WITNESS: It is difficult, very difficult for me to remember, Mr. Condon. We had a regular training program that we followed every day and - -

BY MR. CONDON:

Q Well, let me withdraw. Was the emphasis on weaponry as opposed to courtroom procedures and collecting evidence?

A No.

Q Or was the emphasis more on procedures, the white collar type of work as this?

A Yes, more on the evidence gathering and procedures.

Q That was the majority of your time?

A Yes.

Q And on interviewing and interrogating and memorandum keeping and things of that nature, would you be able to give us some insight as to the amount of training;

you had on that?

A. That was part of that six weeks training.

Q. What I am trying to get at, was it half of it, a quarter of it, would you have any idea at all? If you don't know, you don't know.

A. I really don't know.

Q. Would it be fair for us to know that that was in part one of the points that was strongly emphasized in time and in lectures?

A. Yes, it was.

Q. Now, that you received some additional training at another time?

A. Yes, I did.

Q. And can you tell us what you were trained in at that time?

A. That time, the title of the school was the Special Agents Basic School and at that time, it was, the entire six-week course was geared toward preparation of final reports, the special agent's report. In other words, how to assemble exhibits and how to introduce various memorandums and contacts that you had with people and going through the basic methods of proving additional income.

Q. Would it be, - would I be capsulizing it fair if it was taking it from the beginning in a case like this,

putting it in the logical form that it has been here,
marking it so that you can present a case to a grand
jury and a courtroom?

A Yes, yes.

Q Now, after you did that and completed that course, then
did you go about the work of being a special agent?

A Yes, I did.

Q And what year did you begin that?

A I completed the Special Agent Basic School, I believe,
if I recall, in September of 1968, and then I came back
to Buffalo and then started working.

Q All right. Now, when, - do you recall when this was in
1968?

A When I finished the school?

Q When you came back to Buffalo?

A When I finished the school?

MR. WILLIAMS: I don't know how this is relevant,
whether it was the first of September
or the end of September.

THE COURT: I sustain the objection to all this
questioning about schooling.

MR. CONDON: All right.

THE COURT: As all agency has received
schooling. If you can explain to me why
we have to go into the details of it,

I will listen.

MR. CONDON: I won't go into it any further at this particular time.

THE COURT: Let us get to the facts in this case.

BY MR. CONDON:

Q Thank you very much. That you were assigned this case September 19th of 1969?

A Yes, sir.

Q Up until that time, - in other words, from the time you had finished that school and up until September of 1969, had you completed any other case where you had actually testified in court?

A Testified in court, no, I did not.

Q Had you been in charge of another case prior to this one?

A Yes, I had other cases.

Q How many other cases did you have?

A I had other cases at the same time that I was working this one.

Q And at the same time you were on this case, did you continue to prepare and work on other cases?

A Yes, I did.

Q And did you have the occasion after you finished that

school up to the present time to train other individuals to do the same work as you?

A. I didn't follow the question.

Q. Have you trained anybody else to do what you do?

A. No, I haven't trained anyone else, no.

Q. Now, Mr. Pasquarella, I was noticing and admiring the fact of the way you testified here without any notes to speak of a. - -

MR. WILLIAMS: I object to Mr. Condon's editorializing.

THE COURT: Strike the remark, ladies and gentlemen, and disregard it. The witness may use or not use notes under the rules. It does not make any difference. All right, ask a question, please, Mr. Condon.

BY MR. CONDON:

Q. In testifying, you have chosen not to use any notes, isn't that correct, Mr. Pasquarella?

A. Yes.

Q. All right. Now, was that part of your training at the school you got, to get up and testify in front of a jury without any notes?

A. I don't remember being specifically told that when you

get up and testify that you can't use notes, no.

Q. No, as part of the training, that you come across better to the jury, that was some of the things that you were taught, how to present yourself well in a courtroom, wasn't it, in an effort to get a conviction?

MR. WILLIAMS: I object to this, your Honor, far beyond proper examination.

THE COURT: Strike that. That is an improper question.

MR. CONDON: I apologize, your Honor. I had no idea it was.

THE COURT: Mr. Condon, let us get to the merits of what this is all about. It does not matter whether he uses notes or not. He made certain reports. If you want those, let us know about it.

BY MR. CONDON:

Q. Thank you very much, your Honor. Mr. Pasquarella, so you could get up here and testify today, could you tell us what you did to refresh your recollection?

A. I went over my memorandums of interview.

Q. And can you tell us, did you do that once or more than once?

A. I did it more than once.

Q. Can you tell us on how many occasions you did it?

A How many separate occasions?

Q Yes, sir.

A No, I can't tell you how many separate occasions, but I did do it more than once.

Q All right, and would we have been understanding that it may be more than five?

A It may be more than five. I am not certain.

Q Would it be more than ten?

A No, I don't think it was more than ten times.

Q All right, fine. Now, if I understand, you were with Mr. Kazmierczak as you have indicated and talked to him on the 7th day of October and then again on the 24th day of October.

A Yes.

Q And so you could recall and grasp everything that is said, was that done, - did you do anything other than just rely on the memorandums that you made at that time?

A I relied on my memorandums and document receipts that I had given to Mr. Kazmierczak for documents that I got from him. That is a separate record other than the actual memorandum of interview.

Q So that is what you did, is that correct?

A Yes.

Q Now, you were assigned this on the 19th and one of the things that you wanted to do as soon as possible was

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to examine and interview Mr. Kazmierczak, is that correct?

A. Yes, sir.

Q. All right, and did you prepare yourself to do that?

A. Yes, I did.

Q. All right, and can you tell us what you did to prepare yourself to do that?

A. Well, the Revenue Agent, Mrs. Tony, had made a referral and based on that referral, the case was assigned to the Intelligence Division. I examined her referral. I talked to Mrs. Tony about the case and that's about it.

Q. Has part of your training to prepare an outline before you went out and interviewed someone --

A. Yes.

Q. And this particular case, did you follow your training and prepare such an outline?

A. I am sure I did have an outline.

Q. And would you be able to give us some idea of how long you spent on preparing that outline?

A. No. I don't know how long I spent on the outline.

Q. Would you know if it was more than a day?

A. I can't recall.

Q. Would you know if you had done it on more than one day working on it?

A I have a record of my activities. Maybe if I could look at that, that would refresh my memory.

Q Surely.

A According to this record, I reviewed Mrs. Tony's file on October the 1st of 1969 and October the 2nd of 1969. I also, - I continued to review the Revenue Agent's file and I discussed the case with her. On October the 3th, I prepared an outline for the interview.

Q All right. Now, - -

A Does, - I don't know whether I spent eight hours each day doing each of these things, though.

Q And you don't know you did not?

A Right.

Q All right. While you were with Mr. Kazmierczak on these two occasions, were you making notes?

A Yes, I was.

Q And what were you making them on, do you recall?

A It probably was one of those yellow legal pads.

Q In other words, like the ones we have been using around here in the courtroom?

A Yes, sir.

Q And do you recall when you, from them, made your memorandum?

A It would either have been that afternoon or the next

day.

Q. Now, according, - and tell me if I am correct, - you have a manual of instructions, a special agent's manual of instructions?

A. Yes, we do.

Q. And on that, is it suggested and are you required to put down the date you do that?

A. The date that we prepare the memorandum?

Q. Yes, sir.

A. I don't know, Mr. Condon.

MR. CONDON: Would you mark this for me, please?

(Defendant's Exhibit Number 12
marked for identification.)

BY MR. CONDON:

Q. I show you Defendant's Exhibit 12. This is a handbook for special agents. Is that a copy of your handbook?

A. I have never seen this particular document. It says "Handbook for Special Agents, Internal Revenue Manual, Chapter 9900". That is the section of the manual that does apply to the Intelligence Division.

Q. I wonder if you could refer to Section 246.55.

THE COURT: So that I understand, Mr. Pasquarella, is it that you are not familiar with this

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particular document here, that there is a handbook for special agents, but it is simply not in the format? This is Commerce Clearing House Publication.

THE WITNESS: Yes, there is a manual.

THE COURT: You have a manual, but it would be -

THE WITNESS: A large book.

THE COURT: It is a different format?

THE WITNESS: Yes, your Honor.

THE COURT: This is dated December 5, 1974.

THE WITNESS: Yes, sir.

THE COURT: Was there a manual in effect back when you were carrying on the investigation in this case?

THE WITNESS: Yes. Yes, your Honor.

THE COURT: Are there amendments and supplements to your handbook from time to time?

THE WITNESS: Several of them, your Honor.

THE COURT: All right.

BY MR. CONDON:

Q Could you refer to Section 246.55, please?

THE COURT: I suppose you just have one, Mr. Condon?

MR. CONDON: I am afraid I do, your Honor.

I have a photostat here.

THE WITNESS: 246?

THE COURT: Mr. Williams, if he could follow along. Do you want to come up and just look over Mr. Pasquarella's shoulder so that you will know what we are talking about?

THE WITNESS: 246.55, Mr. Condon?

BY MR. CONDON:

Q. I am very sorry, 246.55, Paragraph 1.

A. Yes.

Q. And can you tell us if it reflects there, stating of a memorandum of interview, it should be promptly signed and dated by the agent present.

A. That is what it says, yes.

Q. Now I am looking for the interview as well if I can get it. I show you, for your interview of the 24th and your interview of the 7th, I ask you if you did that in either event?

A. Was the question whether I signed and dated them; is that your question?

Q. Yes, as your manual requires you to do.

A. I just signed them. I did not date it. I have just the date of interview at the top of the memorandum.

Q Now, is there any record at all that you can point to as to actually when those memorandums were made?

A No, not specifically, no.

Q So the only thing that we have to rely on here as to when those memorandums were made is your recollection?

A Yes, sir.

Q And I understand you don't have a recollection, but you feel they would have been done the same day or the day following?

A Yes, sir.

Q Now, was there a time that you went over that memorandum with Mrs. Tony? Why I mention that, I note her signature on the bottom.

A Yes.

Q Did you go over it with her?

A Well, after it was, - after I wrote it out or dictated it and it was typed by our secretaries, then I showed it to Mrs. Tony.

Q And she signed them?

A She signed them.

Q All right. Now, the next section, 246.6, it is my understanding every record of an interview should be carefully reviewed and any typographical errors or any error in accuracy of contents should be corrected and I ask you did you follow that in this instance?

MR. WILLIAMS:

May I ask a question? I don't understand. Mr. Pasquarella, the manual that Mr. Condon has given you, are those same sections in the manual that your office uses and that you use?

THE WITNESS:

I can't tell. I am really not certain. I would have to get the actual manual.

BY MR. CONDON:

Q. I am agreeable to that.

A. I don't know firsthand. I just do not know.

Q. Well, let me ask you this. Maybe we can save that. Is it a fact that you have been trained and do you, everytime you make a memorandum that you go over it carefully to review it for any typographical errors and for accuracy of context?

A. Yes.

Q. And was it done in this particular instance?

A. Yes.

Q. Now, were any errors found?

A. I don't remember.

Q. What you, whenever it was done, that you dictated this memorandum, - incidentally, - strike that. Do you recall when you got the memorandum back after it was

typed for your review and signing?

A. No, I don't.

Q. That you dictated that from some yellow notes that you made when you were talking to Mr. Kazmierczak?

A. Yes. I either dictated it or I wrote it out in longhand. I am not certain of whether, - I do both, - on this particular case whether I dictated it or wrote it out in longhand. I am not certain.

Q. And there is no record for us to know what you did in this event?

A. No.

Q. And obviously, you don't recall?

A. No, I don't.

Q. Now, the outline, were you using that, if you recall, when you dictated your memorandum?

A. Yes.

Q. So you are using the outline and your memo sheets as well, is that correct?

A. Yes, sir.

Q. All right, and what I understand is your outline was certain things you had done in advance while you were talking to Mrs. Tony as to what you hoped to achieve during the interview?

MR. WILLIAMS: That is not the testimony of the witness.

MR. CONDON: All right, I will withdraw the question.

THE COURT: It is up to the jury to recall what the testimony of the witness is, but you withdraw. Put another question.

BY MR. CONDON:

Q. Yes. What was the purpose of your outline?

A. To plan what questions I was going to ask him.

Q. All right, and you had particular goals in mind, did you not, as to what you were attempting to achieve in the interview?

A. Yes.

Q. As a matter of fact, you are well trained in conducting interviews, are you not?

A. Yes.

Q. And you do start out with particular goals in mind, do you not?

A. I start out with an outline and I ask the questions according to the outline I have prepared.

Q. All right.

A. And sometimes, you have to switch, depending on the answers that you get.

Q. Okay, fine, and so when you made out your memorandum there from what you have written down in hand, you are

using your outline and you are using your memorandum,
is that right?

A I didn't follow that question, Mr. Condon. I am sorry.

Q All right. Did you say a moment ago, when you dictated,
you used your outline, when you dictated that memorandum?

A Yes.

Q All right, so you used the outline you had made some
days before the interview and you used also the memo-
randums you made during the course of the interview?

A I didn't make, I didn't prepare a memorandum during
the interview. All I did was marked answers down to
questions I asked Mr. Kazmierczak. I didn't write
full sentences and paragraphs at the interview, just
answers to my questions.

Q You are saying that you may havewritten it down verbatim
or you may not, right?

A Right. It was notes that I was taking.

Q Okay, so now what I understand of the outline and the
memorandum that you made at Mr. Kazmierczak's are one
and the same?

A I didn't prepare any memorandum at Mr. Kazmierczak's
place of business.

Q Well, what do you call it when you write on there at
Mr. Kazmierczak's place, what do you call that document?

A Just like I said, just a yellow pad and I had questions

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listed on there.

Q Let's call it a yellow pad.

A Okay. I asked him questions.

Q Was the outline on a yellow pad?

A Yes.

Q The writings that you made, was that on the yellow pad that had the outline?

A Yes.

Q So the notes that you made when Mr. Kazmierczak and the outline, are all and the same document?

A Yes.

Q Was it one sheet of paper or more than one sheet of paper?

A I am sure it was more than one sheet.

Q Do you know?

A I know it was more than one. How many it was, I don't know.

Q Now, what did you do with that, what did you do with that yellow sheet of paper or yellow sheets of paper, your original entry, original notes?

A I used those to prepare this memorandum.

Q And then did you put them in the file for safekeeping?

A No.

Q What did you do with them?

A Destroyed them.

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Q Your reason for destroying them is what?

A I just destroyed them. We don't keep the notes of the interview?

Q Never?

A No.

Q Is that part of your training?

A Yes, it must have been. We do not keep the original notes.

Q Were you trained not to keep the notes?

A I don't remember being specifically told not to keep the notes, no.

Q You don't?

A No.

Q Now, if there was an error at all in the transcription from one to the other, there would be no way to determine that now?

A Now, no.

Q Okay, and you have no recall how long after it was you got these two memorandums back?

A I am sure it would have been within a couple, a day or two, from the secretaries.

Q Do you have a particular recall?

A Well, I know it is not weeks or months.

Q Do you know if a weekend intervened?

A No, I am not certain.

Q Do you know how long after you signed it was that Agent Tony signed it?

A No, I don't.

Q Okay. Now, it is a fact, is it not, that everything that you said and everything that Mr. Kazmierczak said, - let me strike that. You have had an occasion to testify on the 12th day of November of 1973 relative to those memorandums in court and that everything that you said and everything Mr. Kazmierczak said or Mrs. Kazmierczak said is contained in those memorandums?

A You are referring to my testimony at the, - on November 12th?

Q I am referring to what you said under oath in this court on November 12th, 1973. Do you recall testifying?

A Yes, I do recall.

Q Do you recall testifying about those documents?

A Yes, I do.

Q Do you recall testifying that everything in them contains everything that you said and everything that they said?

A I didn't testify, - I didn't state what was in these documents at that hearing.

Q That's correct.

A All right.

Q Just that everything that was said you put in there?

A. Yes.

Q. Contains everything that you said to Mrs. Kazmierczak and to Mr. Kazmierczak and what they said to you?

A. I think I would like to look at that, Mr. Condon.

Q. Let me ask you this. Would there be any reason to suspect that that isn't so?

A. I am really confused on the question as to what - -

Q. All right, let me clear up the question. One, if you have ever, at any time, found any errors that you have been reviewing them on several occasions, yes?

A. Yes.

Q. Has it come to fore that there are any errors contained in them whatsoever?

A. No, none that I know of.

Q. Now, what I am asking you is, did you make an effort to put down there everything that Mr. Kazmierczak said and Mrs. Kazmierczak?

A. Yes.

Q. And everything that you said?

A. Yes.

Q. And is that your best understanding?

A. Yes.

Q. There is nothing left out, right? My question is, you have testified in effect to that previously?

A. Excuse me. I was confused before.

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Q I can do that. Please just do what you were doing
before. Now, give me, - withdraw that. Mr.
Kazmierczak was cooperative?

A Yes, he was.

Q There is no question he didn't answer?

A No, none that I can think of.

Q Nor Mrs. Kazmierczak?

A That's correct.

Q And that you were prepared to follow through on every-
thing, were you not?

A Yes.

Q And you were trained to do it?

A Yes, I was.

Q And if there was anything you wanted to develop or
anything more you wanted to know, not only were you
trained to do it, you had an outline to do it and you
had the opportunity to do it?

MR. WILLIAMS: That is about a ten-pronged question.

I don't know.

THE COURT: May he can answer it, Mr. Williams.
If he can, we can, perhaps, get ahead a
little faster.

THE WITNESS: Would you repeat the question, please?

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BY MR. CONDON:

Q. Sure. Let me be specific about it. Can you tell us if it is your training and if you prepared that day, both the days you were with the Kazmierczaks, if, in fact, you did, you followed through, you minimized the situation where something could be said at the trial or you would be surprised, you followed through on every pertinent lead and on every complete answer and that you received all the information you reasonably expected to get?

A. I assume that you just read that from something?

Q. Yes, I did.

A. Yes, that is basically what I did. I asked the questions and followed through.

Q. All right, and also that you were trained to maintain control and you did maintain control of the interview?

A. I was conducting the interview.

Q. Did it get out of control in any way?

A. No, it didn't.

Q. Did you maintain the control?

A. It never got out of control.

Q. All right, and also you have been trained, have you not, that on occasion, it can be disadvantageous for the Government to ask questions during an interview?

A. That's, - whether I particularly do that - -

Q I am not suggesting anything. I am asking you were you trained, did you learn that it can be disadvantageous for the Government to ask certain questions during an interview?

A Again I have to state that I was not specifically trained, specifically, on this statement that you just read to me. This is a copy of the handbook for special agents. We do not go over it word for word in the course that I take.

Q Do you dispute that that is part of your handbook?

A No, I don't dispute that.

Q That is referred to sometimes as the Bible for you people, isn't it?

MR. WILLIAMS: Your Honor, I am going to object to what the handbook says and what Mr. Pasquarella does. They are really two different things.

THE COURT: Strike the remark about "Bible".
Next question, please.

BY MR. CONDON:

Q Thank you very much, your Honor. Now, did the occasion come up at any time where you chose not to ask any questions here?

A Not to ask a question?

Q. Yes.

A. No, I can't recall an occasion.

Q. Now, at any time, did you ever go back to Mr.

Kazmierczak or Mrs. Kazmierczak or any representative
that they have had to have that checked over to see
that it is accurate?

A. No, I did not.

Q. Incidentally, you do have the ability to take affidavits
from people?

A. Yes, we do.

Q. And you have those forms?

A. Yes, we do.

Q. And you had them with you that day?

A. I am sure I had affidavits in my briefcase, yes.

Q. And you could have that day, if you had chosen, had
Mr. and Mrs. Kazmierczak sign an affidavit?

THE COURT:

Mr. Condon, the agent can do many
things. If we were here and question
him about all the things he didn't do,
we would be here a long, long, long time
and not develop any information which
would be useful, so let us zero in, please,
on what he did do.

BY MR. CONDON:

Q. Okay, fine. Mr. Pasquarella, Mr. Kazmierczak told you

that he kept a \$1,500 box?

A. Yes.

Q. Did you ask to see the box?

A. No, I didn't.

Q. And did you ask where it was kept?

A. I believe I did, or he just told me where he kept it.

Q. Where?

A. He said it was either in the store or in his apartment,
which you just go through a door in the store and you
are into the apartment.

Q. He may have told you one or the other?

A. Pardon?

Q. He may have told you one or the other place?

A. Yes.

Q. Okay. Now, he said he kept a \$1,500 balance in there,
correct?

A. Yes.

Q. And that also at the end of the day, he counted the
money in the cash register?

A. Yes.

Q. And took out an amount that had been in at the begin-
ning of the morning and recorded that in his gross
receipts book?

A. Yes, sir.

Q. And, incidentally, you got a copy of the gross receipts

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book and, - Exhibit 14, is that the book?

A. No, not the receipts book.

Q. I am sorry.

THE COURT: Keep your voice up, please, Mr.

Pasquarella.

THE WITNESS: Yes, your Honor.

BY MR. CONDON:

Q. Government Exhibit 11?

A. Yes. This is a copy of the gross receipts books that Mr. Kazmierczak gave me.

Q. And at that time, that contained several years?

A. Yes.

Q. Many beyond the three years?

A. Yes.

Q. And you also asked for and saw the expense book and they were for each year?

A. Yes, sir.

Q. Now, he told you he cashed checks?

A. Yes, sir.

Q. And that also that there was \$1,500 as we just mentioned in this box?

A. Yes, sir.

Q. Okay. Now, and that when he cashed a check, he would then take the money from the cash, - pardon me, from

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the box that he had there and give the money to the person?

A. Yes.

Q. And then you said he would take, sometime later, money out of the cash register and put it into the box that was the \$1,500 in?

A. Yes, sir.

Q. Would you review your memorandum and tell us if it is contained in there at all anytime he said when he did that?

A. Referring to - -

Q. No. Can you answer that question "yes" or "no". Does he say when he did that?

A. Are you talking about time of day?

Q. Yes, the time of day. Whether he did it immediately after he made that transaction, whether he did it later on or whether he did it at a specific time; does it refer to any time in there?

A. Regarding the example I gave for the cash - -

Q. Pardon me. Could you read it to yourself. It is your memorandum. Go over it very carefully and tell us if it says that.

A. It does not give a specific time or when, just that he did.

Q. All right, and then also that if he got a cash purchase

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during the day, he paid these bills out of the
\$1,500, right?

A. Yes.

Q. But in this instance, at the end of the day, right,
he would take the money from the cash register and
put it into the box?

A. That's what it says, yes.

Q. All right. Now, in your memorandum, does he say when
he counted the money and put it in the gross receipts?

MR. WILLIAMS: Your Honor, I object to this on the
basis that unless Mr. Condon can establish
that Mr. Pasquarella, in fact, asked
the question and got an answer about some
specific time. Mr. Condon is trying to
show that there are certain things that
Mr. Pasquarella put in there. It may
be because the question wasn't asked and
there was no answer given, and I object
to the question on that basis.

MR. CONDON: Can we have the question?

THE COURT: Can you read the question back, Mr.
Knisley?

(Pending question read.)

THE COURT:

Mr. Condon, you mean the daily?

MR. CONDON:

Yes, I do, of course.

THE COURT:

I think this is an important area
of inquiry and, therefore, you may pursue
it. Go ahead, Mr. Condon.

BY MR. CONDON:

Q. Is that reflected in your memo?

A. No, not the time, no.

Q. So you don't know if it was done like at noon every
day or the time before going to the bank closed or
when it was done, right?

A. No, I do not.

Q. And also that when he took some money out of the cash
register and put it into the, - this box where the
\$1,500 was, does your memorandum reflect you ever asked
him if he did that before or after he counted up the
gross receipts?

A. No, it doesn't.

Q. Mr. Pasquarella, there was a time when you were talking
to him that you were, - you asked him a question about
cash receipts, right?

A. Yes.

Q. Now, does your memorandum reflect that that was your
term? In other words, "Where do you keep the cash

receipts", or "What are the cash receipts", and the answer was his terms; does your memorandum reflect that in any way?

A. Are you referring to a specific question, Mr. Condon?

Q. Yes, or anything in there that reflects whether he was adopting your language or that it was his language?

A. As far as the question whether it was his language or my language, I would say it is mine. I asked him about the cash receipts.

Q. Would it be fair to say it was your term, you introduced that into the conversation?

A. Yes.

Q. Did you ever, at any time, and also is it reflected in your memorandum when you were talking about cash receipts, was he referring to the money in the cash register or the money in the box or both, if you know?

A. Well, I can't answer your question. I don't understand it.

Q. All right. You use the term "cash receipts", right?

A. Yes.

Q. Tell us when you use that term, what do you mean?

A. I am talking about cash money that he took in in his business.

Q. All right. Anytime when you use that term with him, "cash receipts", did you have him identify as reflected

in your memorandum if he was referring to the money that was physically in the cash register or physically in this \$1,500 box?

A. I can't recall asking the question trying to separate the two.

Q. And it is not reflected in your memo anyplace?

A. No.

Q. Now, you asked him certain things that he paid out in cash, such as he gave his wife \$90 a week out of cash receipts?

A. Yes, sir.

Q. And when we understand, it is not reflected in your memorandum and there is no way to know if it came out of the \$1,500 box or it came out of the cash register?

A. It came out of cash receipts is all I can say.

Q. So it came out of any cash that was around there as far as we can tell from the memorandum?

A. Well, I don't know where it came from.

Q. And you never asked?

A. I asked him what he did with the cash receipts from his business.

Q. Did you not ask him, "Did you pay anything out of cash receipts"?

A. Yes, I did.

Q. And you talked to him about giving his wife \$90?

A. Yes.

Q. And he said it was paid out of cash receipts, right?

A. Yes.

Q. And that was a term you adopted, - he adopted your language, you entered it into this conversation?

A. Yes.

Q. So you never asked him if he paid it out of the cash register or paid it out of utility money or paid it out of the \$1,500 box?

A. He told me he never paid anything out of the, - he never paid his cash expenses out of the, - he paid these expenses out of the box.

Q. And did you, - how many times did you ask him that?

A. How many times?

Q. Yes.

A. I don't know exactly. Do you want me to check?

Q. It is reflected once in your entire memorandum on the two occasions that you were there, right?

A. I am sure it is, yes.

Q. So as a result on one occasion you said to him, "Where do you pay expenses out of", and he said, "Out of the box", is that correct, the \$1,500 box?

A. Yes.

Q. All right. Now, did you explain to him when he was talking about giving his wife \$90 out of cash receipts

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that that was an expense that he gives her \$90 a week?

A. Did I explain to him?

Q. Yes.

A. No. I just asked him where it came from.

Q. I see, okay, and he said "From cash receipts"?

A. Yes.

Q. Now, you also talk about paying employees?

A. Yes.

Q. And you asked him if he paid them out of cash receipts
as well, right?

A. Yes.

Q. Now, this was on a different interview, several days
later than the first time you asked him if he ever
paid any expenses except out of the strongbox or the
cigar box he had back there, right, the \$1,500 box?

A. That's where he told me what he paid his expenses out
of, yes.

Q. Well, Mr. Pasquarella, on October 7th, you saw him?

A. Yes, sir.

Q. Incidentally, you wanted to talk to him and his wife
on that occasion, did you not?

A. No. I wanted to talk to Mr. Kazmierczak.

Q. Well, do you have any recollection at all of she just
returning from the hospital and being in bed right in
the next room and you wanted to know if you could talk

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to her and she was too ill at that time, because she
just come out of an asthma attack?

A. No, I did not know that.

Q. Do you have a recollection of that?

A. No, I don't.

Q. And I take it if it wasn't in your memorandum, you
wouldn't recall it?

A. That's correct.

Q. All right. Now, it was on that first occasion when you
asked him, "Where do you pay your expenses from", and
he said, "The \$1,500 box"?

A. Yes.

Q. And then you came back on the 24th, right?

A. Yes, sir.

Q. And you asked him specifically at that time where he
paid his wife \$90 a week, what from?

A. Yes.

Q. And he said he paid it from cash receipts?

A. Yes.

Q. And I take it at that particular time, you had no dis-
cussion with him if he considered that an expense or
no consideration, or no consideration, - pardon me, -
no conversation with him if he considered cash receipts
the cash register or if he considered the cigar box
that he had?

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A. No. I asked him what he did with the cash and that's what he told me he did.

Q. No, no. You asked him, if I understand correctly, when you came back on the 24th - -

THE COURT: Mr. Pasquarella, there were two places where money was kept, the box and the cash register.

THE WITNESS: Yes, sir.

THE COURT: What we are trying to find out is when you talked to him and you referred to certain monies and you referred to certain sources, what he said, what your notes say, so when you listen to Mr. Condon's question, keep this in mind.

THE WITNESS: Yes, your Honor.

THE COURT: Mr. Condon.

BY MR. CONDON:

Q. So when you went back on the 24th, if I understand correctly, after being there on the 7th, you asked him when he gave his wife \$90 a week, did he pay it out of cash receipts and he said, "yes", and you asked him, "When you pay your employees in cash, do you pay them out of cash receipts", and he said, "Yes"?

A. Right.

Q. Now, when different vendors come in, "Did you pay that out of cash receipts", and he said, "Yes", right?

A. Yes.

Q. And there was another thing you asked, did you not, that he paid out of cash receipts?

A. I also asked him what else he did with it and he said he replenished his \$1,500 cash on hand.

Q. Out of his cash receipts?

A. Yes.

Q. Now, he couldn't replenish \$1,500 out of the cash receipts unless he considered the cash register the cash receipts could he?

A. That's correct.

Q. And you never asked him when he did any of these things, did you?

A. When he did them?

Q. The time of day.

A. No. No, I didn't.

Q. But you asked him if he made a record, did you not?

A. Of what?

Q. Of any expenses like if he paid the employees, right.

A. Yes.

Q. And he did, - you checked that he did make a record?

A. Yes.

Q. He paid it out of cash receipts, that he gave his wife

\$90 a week and I understand there was not a record?

A. That's right.

Q. Okay, out of cash receipts, and that he paid different vendors that would come in there out of the cash receipts, right?

A. Yes.

Q. But again, there was never, at any time, - there was never any time of day, if it was before or after or anything, there was never any time frame or place that this was done at all, was there?

A. No.

Q. And if it wasn't inquired into, wasn't found out, wasn't followed through, it wasn't because of any lack of cooperation or lack of forthrightness of Mr. Kazmierczak?

A. No.

Q. Because you didn't ask and you didn't inquire?

A. That's correct.

Q. In spite of your outline, right?

A. Yes.

Q. Now, Mrs. Tony had gone through some type of computation, had she not?

A. Yes, sir.

Q. She had gone out there and, I don't know, made some type of a check. I guess is we all get checked now and then, right?

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A Yes. She conducted an audit of his return.

Q This is civil, as opposed to criminal?

A Yes, sir.

Q Okay, and when I understand correctly that she had
checked the money he had put into the bank?

A Yes, sir.

Q Plus money he had paid out?

A Yes.

Q And you took a combination of that total, right, and
then looked at his gross receipts and that was less
than that combination, am I - -

A That's generally correct, yes.

Q Generally so?

A Yes.

Q And that would show that there is a reason for an
additional tax due, there is no doubt about that, whether
it is simple error or mistake or anything else?

A That's correct.

Q Now, where you got into this and tell me if I am correct
on this, is to find out if there was an evil intent
to cheat the Government, that that was the reason it
was done?

A Yes, sir.

Q And in that reason, you went out there and that was
the purpose, for the purpose of determining, as the term

goes, that it was willful?

A. Yes, sir.

Q. And you have got a large section in your handbook
about willfulness, right?

A. Yes, sir.

Q. Okay, and did you check that first?

A. Did I check it first?

Q. Yes, before you went out on your outline, what you
were looking for?

A. I know I didn't particularly look up that section
before I went out on this interview.

Q. Well, you knew it would have to be something that
was unjustifiable, without excuse, stubbornly and
obstinately and perversely made?

THE COURT: Wait a minute. That is a question
of law. Disregard the question. That
is not a correct statement of the law.

MR. CONDON: Forgive me, your Honor. I apologize.

THE COURT: Can we get to the facts, Mr. Condon?

A lot of this you know and I believe, and
I am going to state it direct, bluntly
and candidly, it is window dressing.

Mr. Pasquarella has conducted an investi-
gation and you are entitled to question
him about what he did and you have, but as

far as all these adjectives and so forth,
it does not help us.

MR. CONDON: Your Honor, most respectfully, I
think - -

THE COURT: Mr. Condon, put a question. The
last question does not help the inquiry
whatever. Next question.

MR. CONDON: I am just attempting to find out - -

THE COURT: Next question.

BY MR. CONDON:

Q. Thank you very much. Did I recall in your direct
testimony here that you asked Mr. Kazmierczak if the
amount of money she kept in the household, did you
say that?

A. I didn't testify to anything that Mrs. Kazmierczak
said.

Q. Okay. At any time when you are testifying, did you
have a note in your pocket here that you got out?

A. Yes.

Q. May I see that, please?

A. It was the spelling of the name of the two accountants.

Q. The spelling of the Polish names?

A. Yes, sir.

Q. Okay. Thank you very much, and you had a yellow sheet

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of paper with some numbers on it?

A. That was not mine.

THE COURT: That was a pad that was left by a prior witness and it was handed to the Court and these numbers just weren't pertinent to this inquiry whatever.

BY MR. CONDON:

Q. Thank you very much. Mr. Pasquarella, the materials that were turned over voluntarily at your request the first time you were there that day by Mr. Kazmierczak, are they the records that were primarily used for this computation that we just discussed?

A. Yes.

MR. CONDON: Would you pardon me just a moment, please?

THE COURT: Surely.

BY MR. CONDON:

Q. You mentioned also that you asked Mr. Kazmierczak if you could enter his safe deposit box?

A. Yes, I did ask him that.

Q. And do you recall any conversation that day saying, "We can go over right now"?

A. Did he tell me that we can go over?

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Q Any such conversation?

A No. He said he would call me and let me know when it
was at his convenience.

Q All right. That anytime a person enters or leaves
a safe deposit box they have to sign in and out, right?

A Yes, sir.

Q All right, and did you check to see of any activity
going in and out of that safe deposit box?

A Yes, I did.

Q And if, for any reason, you feel you wish to get in
there, you can apply for a document that will allow
you to get in there, can you not?

A It is not that easy.

Q I didn't say it was that easy. I say if you want to,
you can?

A I can't answer your question.

MR. WILLIAMS: I pose a question as to the legality
of the situation as to what can be done
and what can't be done.

THE COURT: This is general, but under certain
circumstances, an application can be made.
You are not familiar with the details of
how this procedure is followed, but you know
that?

THE WITNESS: Yes, it can be done.

BY MR. CONDON:

Q. All right. Did you attempt to do it in any fashion?

A. No, I did not.

Q. That you told him that day that he may have an attorney, did you not?

A. Yes, I did.

Q. And the next month he retained an attorney?

A. Yes, he did.

Q. All right, and that attorney was allowed to act for him in various ways?

A. Yes.

Q. And you had conversations with him?

A. Yes, I did.

Q. Did you, at any time, ever ask him anything about this thing of getting back into the safe deposit box?

A. No, I didn't.

Q. You saw that there was a cash register there?

A. The interviews that I conducted, Mr. Condon, were in Mr. Kazmierczak's apartment. I was only in that store on October 6th for maybe two or three minutes and I don't remember seeing the actual cash register.

Q. You wouldn't know if it was manual or electric?

A. No, I wouldn't know.

Q. Did you investigate to find out or inquire if there was ever any problem with it in any way?

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A No, I didn't.

Q The tape or the counter or anything like that?

A No, I did not.

Q Did it come to your attention that the money for the sales tax was kept separately in a little plastic dish?

A No, I did not. I wasn't aware of that.

Q And the money from the utility was kept in a separate tray separately under one of the counters?

A It was kept separately. How or where, I don't know.

Q Now, when the utility money, if it built up in any place, do you know where it was kept?

A No, I don't.

Q That at any time, did you ever create any surveillance or anything to keep him under observation before or after this?

A Absolutely not.

Q How often he worked alone or anything like this you don't know?

A No, I don't.

Q And did you ever inquire of him of any situations where there would be a lot of people in there or suspected shoplifters or someone would cash a check or pay a utility or they wanted to do several things at one time, cash a check, pay a utility bill, maybe an

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old bill and a cash purchase and that he would handle all that?

A. No, I didn't.

Q. Did you explore in any way at any time that on certain days the industrial plants were paid and it would be extremely heavy with checks?

A. No, I did not.

Q. Or Welfare of Social Security, they all come in on one day?

A. No, I did not.

MR. WILLIAMS: Excuse me, your Honor. I object to what could have been. The question is what he did on this occasion, not could be.

BY MR. CONDON:

Q. I am very sorry. I didn't mean to say "could you". I will withdraw the question. Did you?

A. No, I did not.

Q. Did you run any analysis of that in any way to find out how many there would be on a particular day?

A. No.

Q. Or at certain days he would have to pay a substantial amount of expenses in cash?

A. No, I did not.

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Q Now, you saw his accountant, Mr. Ciapkciik?

A Yes, I did.

Q And he died?

A Yes, he did.

Q And the accountant that he had for the two years before
that, he died also?

A Yes, he did.

Q All right. That interviewing Mr. Ciapkciik, did you make
an outline?

A Yes, I did.

MR. CONDON: Will you mark that, please?

(Defendant Exhibit Number 13 marked
for identification.)

THE COURT: Ladies and gentlemen, we will now be
in recess until 2:00 p.m., and we will
continue with the testimony in this case
at that time. You may go out with the
Marshal and come back at 2:00.

(Jury escorted from the courtroom.)

* * * * *

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PROCEEDINGS: After recess, 3:02 p.m.

APPEARANCES: As before noted.

(Defendant present.)

(Jury present.)

MICHAEL A. PASQUARELLA, JR., a witness called by and in behalf of the Government, having been previously duly sworn, resumed the witness stand and testified further as follows:

CROSS EXAMINATION BY MR. CONDON: (Resumed)

THE COURT: All right. Mr. Pasquarella is on the stand. Mr. Condon, do you want to continue?

BY MR. CONDON:

Q. Thank you, your Honor. Mr. Pasquarella, you mentioned that the, - that Mr. Kazmierczak mentioned that he had gone on a Florida vacation?

A. Yes, sir.

Q. And did you, by talking to him, narrow it down as to just when it was?

Q. No, I don't think I did.

Q. And by other sources, - by that I mean any documents you picked up, were you able to ascertain actually when it was?

A. No.

Q. Over the lunch hour I got it straight. This is the book, Government Exhibit 11, where the gross receipts, - in other words, the total amount each day was recorded in this?

A. Yes, sir.

Q. And this went on for several years, the gross receipt book, Government Exhibit 11?

A. Yes, sir.

Q. All right, and as we have indicated before, Government Exhibit 12 which is an expense book, is the expense for each year?

A. Yes, sir.

Q. And these obviously are not the originals but the originals for the expense were single books and gross receipts book was a bound book containing several years?

A. Yes, sir.

Q. All right. That in the event, and income tax time books going to the accountant, the expense book for that year would, of necessity, go to the accountant or the person who made out the income tax?

A. Yes.

Q. In other words, for the year before, and the gross receipt books would have to go because they were bound for the years, right?

A. Yes.

Q. But you could operate with the expense book for the current year, you would have that there?

A. Yes, sir.

Q. Therefore, there would have to be some substitute record that you would use while the gross receipts book was at the accountant's or at the person who made out the income tax return?

A. If the book is one book where you are keeping one year after another in, yes.

Q. Well, the fact of the matter is it was, right?

A. Yes.

Q. In your conversations with Mr. Kazmierczak, you never explored that particular book, that substitute book?

A. No, I didn't.

Q. Okay. Now, you mentioned with Mr. Williams that there was a Form 91 quarterly form for employees?

A. Yes, sir.

Q. And that contains the name of the employees?

A. Yes, sir.

Q. And it has Social Security numbers?

A. Yes, sir.

Q. And before you looked at a record that was a log that showed the days, different things you did relative to this case?

A. Yes.

Q. And I am sure we got it handy, but would you know, did you generally work on that for the balance of the year 1969 on this matter?

A. Did I work on this case for the balance of '69?

Q. Yes.

A. Not exclusively, no, but I had other cases going also.

MR. CONDON: Could we have that? Thank you. No, the log.

MR. WILLIAMS: The chronological worksheet?

BY MR. CONDON:

Q. Yes. Let me see if I might be trying it this way while they are looking for it. Would it be fair for us to say and understand that most days following your assignment on this on September 19th of 1969 you did some work on this matter?

A. I can't answer that. I would have to refer to that chronological worksheet.

Q. Here is a copy that Mr. Williams says is permissive to use. Would you be able to tell us now, refreshing your

recollection, if that is so?

THE COURT:

Mr. Condon, will you keep your voice
up, please.

BY MR. CONDON:

Q. I am very sorry, of course. Thank you, your Honor.

A. Do you want me to read the dates that I did work on it?

Q. I was hoping if that is the only way we can do it, -

let's see if we can do it this way rapidly, that in
October you did something on the 1st, 2nd, 3rd, two times
on the 3rd, 6th, 7th, 8th, three times on the 8th, 9th,
17th, 20th, 23rd, 24th of October. On November 6th, 10th,
13th, 14th, 17th and 18th, and it continues to the 16th
and 19th, the 20th, the 24th, two entries on the 24th,
on the 28th, and then December 1st, and then we go to
December 2nd, to the entry, - another entry on the 2nd,
the 3rd, 4th, 5th, the 6th, the 10th, another one on the
10th, a third one on the 10th, the 11th, another one on
the 11th, another on the 11th, the 12th, 15th, 22nd, 23rd,
the 24th and 29th, 30th, another on the 30th. Is that
the 30th?

A. Yes.

Another on the 30th and then we jump to the year 1970,
right?

A. Yes.

Q. And then we have January 2nd, 5th, two on the 6th, the 10th, the 19th, the 23rd, the 20th, the 27th, three on the 28th and then into February the 4th, the 5th, the 9th, two on the 9th, the 11th, the 12th, the 12th and another on the 12th, the 13th, 16th, the 19th, another one on the 19th, the 21st, the 26th; then March 4th, March 6th, March 18th, 19th. Another entry on the 19th, 23rd, the 30th, the 31st. April 4th, 7th, 8th, 20th, 21; another on the 21st, another entry on the 21st, two entries, three entries, four entries on the 22nd, two entries on the 23rd, 24th, the 27th, three entries on the 28th and one on the 29th. Are we in accord so far?

A. Yes.

Q. Okay. May 5th, 6th, two entries, four entries on the 6th, on the 7th, the 12th, the 14th, two on the 14th, two on the 18th and two, three on the 19th, three on the 20th, two on the 21st, two on the 22nd, one on the 25th, the 26th, the 27th, the 28th, and then in July --

A. June.

Q. I am very sorry, June 2nd, June 3rd, 8th, two on the 6th, one on the 10th, the 17th, the 18th, two on the 18th, the 24th, on July 6th, the 20th, August 18th, August 17th, August 19th, - pardon me, August 16th. That's wrong. That is September. August 18th.

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A. No, August 12th, August the 17th.

Q. And then September 16th.

A. Yes.

Q. Were you on a vacation during that period?

A. Probably.

Q. All right. Then October 6, October 9th, October 12th,
October 19th, two on the 21st, one on the 22nd.

November 5th, the 6th, three on the 16th. Now, December,
this is the year '71, right?

A. Yes.

Q. All right. I am sorry, this is still the year of '70.
December 1, December 2, December 3; another entry on
the 3rd, two on the 4th and one on the 9th, December 11,
the 18th, the 21st, the 29th, the 30th, the 31st and
now January '71. Two on the 4th, one on the 7th and the
13th and the 18th and the 19th and the 20th, 21st, the
22nd, the 25th, the 26th, the 27th, the 28th and the
29th, and now into February. February 1, 2 and the 4th,
the 17th, the 18th, 22nd and 23rd and then into March.
March 12th, 15, 16, 17th. Is that May?

A. No, April.

Q. April 14th, April 20th, another entry on the 20th, the
21st, the 21st and the 22nd, 23rd, 20th, and this is
May. May 3rd, May 6th, May 7th, May 11, May 12th,
May 13th, May 14th, May 17th, May 21st, May 24, May 25th.

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Now June, right. June 1st, 2nd, 3rd, 11th, the 22nd and 23rd and the 24th. Oh, and I can't read all this, but there is a full page of entries that started on June the 24th and we can't read this page, but we know we got in July, right?

A. Yes, there are entries in July.

Q. And entries in August?

A. Yes.

Q. And there may be twenty lines at least or so on the page, would you agree?

A. Twenty lines, right.

Q. And they are all full and then we go over to what, October 7th, 8th, 9th, 13th, 18th, 19th, 30th, and November 11th and February the 1st of '72 and then this is --

A. No. On February 1st of '72 the case was transferred from me to another special agent.

Q. I see.

A. That is not my --

Q. That is the special agent then worked on it during March, April, May and into June of '72?

A. Yes.

Q. Thank you very much. Now, you mentioned that the wife got \$90 a week. Is it also a fact from your memorandum that she saved thirty of that and put that back in the

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savings account?

A. Yes.

Q. And in both your memorandums, the one on the 7th and the one on the 24th, is that correct, you saw him on the 7th and the 24th of October of 1969?

A. Yes.

Q. A portion of that was in verbatim by you, is that right, word for word?

A. Yes, it was.

Q. All right. Are you able to tell us during this period of '69 or can you tell us if anything done, was done to determine if the character of the neighborhood that he was in, if it changed, if stores closed, if his economic fortunes improved or not?

A. I am not able to answer that.

Q. I hope you have had an opportunity to review these. Could you tell us this group of pictures that I am showing you, if they substantially reflect the building and the area that you were in on the occasions that you were at that location?

MR. WILLIAMS:

Excuse me. I don't know what exhibits are being referred to. I know photographs, but I assume that they have numbers and I think it would be more

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appropriate to ask one at a time, ask
the questions one at a time.

THE COURT: Can I see the sheaf, please. These
are various pictures, two, three, four,
of the outside of the store, at least
the first are, and then some are of the
inside. At least that is what they
purport to be.

MR. CONDON: That is correct, your Honor.

THE COURT: I think you can look at them and
perhaps if you are not familiar with some,
just tell us so we will note the numbers.

THE WITNESS: The pictures of the outside of the
building are familiar. I remember it as
being like these pictures. That would be
Exhibit 2, Exhibit 3, Exhibit 4, Exhibit 5,
Exhibit 6, Exhibit 7, but the interior
pictures, Exhibits 8, 9 and 10 I don't
recollect if that is the way the interior
of the store looks.

BY MR. CONDON:

Q. Just so I might be clear on this, that you were there for
two hours and ten minutes, if I understand from your
record, your memorandum, on the 7th of October and you

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were there for approximately one hour and forty-five minutes on the, - was it the 24th of October?

A. Yes.

Q. And you had an opportunity to observe and you did observe, and is it your testimony you don't recall or that that situation is different than as you recall it?

A. When I conducted the interviews, we were in the living quarters of the store which I entered through the, if I recall correctly, I entered through the side door as exhibited on Exhibit 5.

Q. And on the occasions when you were back there, you were there on the 6th, you were there on the 7th, you were there on the 8th, right, and you went in the store and you picked up various documentation, et cetera, did you get in the front of the store on any occasion?

A. I was in the store only once and that was on October 6 the first time I ever met Mr. Kazmierczak and that is when he told me he was too busy and he asked me to come back and we left. That is in the store proper.

Q. All right, and I take it as a result of the occasion when you were there in the store, are you not in a position to tell us if these do or do not fairly represent the interior of the store?

A. I cannot say that they do or they don't. I cannot say.

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MR. CONDON: Thank you very much. I would like to offer these if I may.

MR. WILLIAMS: I have no objection.

MR. CONDON: Maybe it might be better to do this later, your Honor, when Mr. White is here.

THE COURT: Yes.

MR. CONDON: I don't have anymore questions. Thank you, Mr. Pasquarella.

THE COURT: Any questions, Mr. Williams?

MR. WILLIAMS: Yes, I have some.

THE COURT: All right.

REDIRECT EXAMINATION BY MR. WILLIAMS:

Q. Mr. Pasquarella, I believe in responding to a question by Mr. Condon, you indicated as you for the most part have testified here today without notes, is that correct?

A. Yes.

Q. All right, sir. Did you have occasion prior to your testimony to review any of your memorandums, notes or any other writings that you made about contacts and your investigation in this case?

A. Yes, I did.

Q. And did you spend some time doing that?

A. Yes, I did.

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Q. All right, sir. Now, with respect to this chronological worksheet which is Court Exhibit Number 18, - do you recall the chronological worksheet?

A. Yes, sir.

Q. All right, sir, and under what circumstances do you make entries on that chronological worksheet?

A. Anytime that I do something regarding that particular case, I enter it. I don't put the entire details exactly as to what I did, but I do make an entry. If I contacted a third party, I would at least put the third party's name down or telephone number and so on.

Q. What about a thirty-second phone call, would I make a record of that?

A. Yes, I would.

Q. Now, you testified in response to Mr. Condon's question that you made notes when you talked to Mr. Kazmierzak?

A. Yes, I did.

Q. All right, sir, I think that in response to his question you indicated there was some kind of outline form that you used?

A. Yes.

Q. All right. Now, with regard to that, can you tell us how these memorandums that you made came into existence?

A. All right. When I returned to the office, I went over my notes and my outline and I prepared, - I either dictated, -

in this particular case I said I didn't know whether I dictated or I wrote it out in longhand, prepared this memorandum that has been introduced in evidence here from my notes and outline that I had used during the interview.

Q. All right, sir. And then did there come a time when you got the typed memorandum back?

A. Yes.

Q. What, if anything, did you do at that point?

A. I made sure what I had in my notes I had in my memorandum.

Q. All right, sir, and then what, if anything, did you do with the notes?

A. I destroyed them.

Q. Okay. Now, you have testified that Mr. Kazmierczak told you that he took out some \$90 a week cash for his wife?

A. Yes.

Q. Did he tell you what the purpose of that was?

A. Yes. That was for personal and household expenses.

Q. All right, sir. Now, Mr. Condon asked whether or not you asked Mr. Kazmierczak whether that \$90 cash came out of some cash box or a cash register; do you recall that?

A. Yes, sir.

Q. All right, sir. Do you remember whether or not you had asked that question of Mr. Kazmierczak as to whether it

came from the cash register or cash box?

A. I asked him where it came from and he said it came from the cash receipts.

Q. All right, sir, and why, might I ask, did you not ask him whether it came from the box or the cash register?

MR. CONDON: I am sorry. I didn't hear the question.

BY MR. WILLIAMS:

Q. The question was why, may I ask, did you not inquire as to whether it came from the cash box or the cash register.

MR. CONDON: Well, I object to that. That is the operation of his mind. He is not telling us what occurred.

THE COURT: I will overrule the objection and permit him to answer.

MR. CONDON: Most respectfully except, your Honor.

THE WITNESS: Because it didn't make any difference. It came from cash. Whether it came from the box or it came from the register or it came from the cash receipts that he said he took in, it came from cash that he had.

BY MR. WILLIAMS:

Q. Thank you. Did Mr. Kazmierczak ever say anything to you about the functioning of his cash register?

A. No, he didn't.

MR. WILLIAMS: All right. Just a moment. I have no other questions of Mr. Pasquarella. I would make an offer of Exhibits 11 and 12 and 14.

MR. CONDON: May I just have a moment with Mr. Pasquarella and then I would like to confer on the offer.

THE COURT: Certainly.

RECROSS EXAMINATION BY MR. CONDON:

Q. Maybe I can be certain about this, but you were interviewing obviously Mr. Kazmierczak as opposed to him interviewing you?

A. Yes.

Q. And Mr. Williams just asked if he asked, - told you anything about the cash register, but the question is you never asked him anything about the function of the cash register?

A. That is true.

Q. And certainly I don't want to get into it, but there are

a great variety of things he didn't bring to your attention, isn't that right?

A. I don't know what he didn't tell me.

Q. So we could go on endlessly about the things he didn't tell you?

A. True.

Q. But surely everything you asked him he answered?

A. Yes.

Q. And he cooperated with you fully?

A. Yes.

Q. Now, you have just testified here, and tell me if I have this correct, that when you returned to your office you dictated from your notes you took when you were with Mr. Kazmierczak?

A. I used my notes.

Q. I am sure you did. I am talking about time. Let me put it to you this way, is it not true that carefully we went over this this morning and that there is no record as to when you dictated that particular memo, the one on the 7th or the one on the 24th?

A. That's correct.

Q. And you have no record of it?

A. No, I don't.

Q. And is it true that you testified here this morning you had no independent recollection when you did it?

A. I think I testified on direct that I did it either that afternoon or the next day.

Q. And may I ask on cross examination do you not say that is what you normally would do?

A. Yes.

Q. As opposed to having an independent recollection of when, in fact, you did it?

A. That's correct.

Q. So I just want to be certain, you don't independently recall when you did it; you are just merely saying now to the jury when you think you may have done it or you should have done it?

A. I am saying that I felt I did it that afternoon or the next day.

Q. Do you have an independent recollection of that?

A. No.

Q. So as a result, do we have it clear that that is when you feel you should have done it?

A. What I should have done?

Q. Yes.

A. I feel that that is what I did do.

Q. Because you recall it or you think that that is what you did?

A. Because that's my normal practice.

Q. All right, so it is your practice; you don't have a

recollection of it?

A. No.

Q. Thank you. Now, Mrs. Tony was at both these interviews?

A. Yes.

Q. And she was there to hear everything that was said as well as yourself?

A. Yes.

Q. And as best you know, did hear everything as well as yourself?

A. Yes.

Q. Mr. Pasquarella, in the event that when Mr. Kazmierczak added up what was in the cash register, if prior thereto he had taken some money out and put it in that cash box, he would have less gross sales for the day, would he not?

A. That's true.

Q. So therefore at least from his point of view that not only when he paid what, but what box he paid it from can make a world of difference, can it not?

A. A difference to what, sir?

Q. A difference to the amount he put down on the gross receipts.

A. Yes.

MR. CONDON:

Thank you.

THE COURT:

Anything else?

MR. CONDON: Just on these exhibits, if I might.

THE COURT: Anything else of the witness, Mr. Williams?

MR. WILLIAMS: I have no more questions.

THE COURT: Thank you, Mr. Pasquarella.

* * * * *

I certify that the foregoing is a complete and accurate transcription of my shorthand notes taken herein.

E. F. KNISLEY, Official Reporter, USDC, WDNY.

EXCERPT OF TRIAL TESTIMONY OF DOLORES
TRAMONT, 2-17-76 and 2-18-76.

PROCEEDINGS: February 17, 1976, 2:00 p.m.

APPEARANCES: As before noted.

(Defendant present.)

(Jury not present.)

MR. WILLIAMS: Your Honor, very briefly, as the Court is aware as a result of our examination of Mrs. Tramont last Friday, real problems with memory, et cetera. In any event, your Honor, because of that situation and for other reasons, I wish to move pursuant to 611(c) of the Federal Rules of Evidence, obtain permission of the Court to ask leading questions of this witness. Rule 611(c) simply provides that leading questions are permitted where a party calls a witness to the stand who is related or who is identified with the adverse party. I think there is no question here. We have got the daughter and father relationship and I think certainly this accounts for the reluctance of the witness to testify as opposed to the Fifth but --

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THE COURT: Let us do this, Mr. Williams, let us go ahead in the usual fashion and then if the difficulty arises, then perhaps you will have to follow this procedure. If you do not have to follow it, let us not use leading questions. If you do, then we will take it up as the problem arises. Are we ready to have the jury come up, Mr. White? Have the jury come up.

(Jury returns to the courtroom.)

THE COURT: All right. The jury is here and all the other participants, Mr. Williams.

MR. WILLIAMS: Thank you, your honor. I call Dolores Tramont.

THE COURT: Do you recall, ladies and gentlemen, Mrs. Tramont was sworn last week. She is here again. You may take the stand, Mrs. Tramont.

DOLORES TRAMONT, a witness called by and in behalf of the Government, having been previously duly sworn, resumed

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TRAMONT, 2-17-76 and 2-18-76.

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DIRECT EXAMINATION BY MR. WILLIAMS: (Resumed)

Q. Mrs. Tramont, might I ask you to speak into the microphone as best you can, please. Mrs. Tramont, what relation are you, if any, to the defendant Florian Kazmierczak?

A. I am his daughter.

Q. All right, ma'am. Now, Mrs. Tramont, were there occasions when you performed certain duties in your father's delicatessen store?

A. Oh, yes.

Q. All right, ma'am, and your father's store is located at 977 Sycamore, is that correct?

A. That's correct.

Q. All right. Can you tell us, number one, what kind of duties and what kind of activities you performed in the store or in connection with the operation of the store?

MR. CONDON: Pardon me. The only reason I am objecting, I presume we are talking about the years 1966, 1967 and 1968.

THE COURT. Will you make that clear, Mr. Williams.

BY MR. WILLIAMS:

Q. Yes. During the years 1966 through 1968, Mrs. Kazmierczak, can you tell us what, if any, duties you performed in

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regard to the operation of the store?

A. Well, I was supposed to look after the store, the business, and look over, take care of the home, the apartment which was connected with it.

Q. All right, ma'am, and during these periods of time did you then live in the home there?

A. No.

Q. All right. Did you continue to live where you presently reside?

A. Yes.

Q. All right, and that is where, ma'am?

A. 67 Fairroaks Lane in Cheektowaga.

Q. All right. During these periods of time, who opened the store?

A. On occasion I did. Other times the help.

Q. All right, and during those periods of time, who closed the store?

A. On occasion I did and the help.

Q. All right, and other occasions the help, is that what you are saying?

A. Yes.

Q. All right. Now, tell us what you did during those periods of time, what work did you perform or what duty did you perform.

A. Well, I took care of the cash box. I paid the help, paid

A. I cannot say that they do or they don't. I cannot say.

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the vendors made out the checks.

Q. All right, ma'am. Made out the checks for what?

A. For the vendors.

Q. I see, all right. Now, can you tell us when you performed these duties, during what periods of time, in other words, did you do this during 1966, 7 and 8?

A. Times of day you mean?

Q. No, periods of time. Let's say, can you tell us the weeks or during what months that you performed these duties?

A. Oh, usually in February.

Q. All right, and for what period of time?

A. Two to three weeks.

Q. All right, and was that so for 1966, 1967, 1968?

A. Yes.

Q. All right, ma'am. Were there any other periods of time other than this two or three week period in February during 1966, 1967 and 1968 when you performed like duties with regard to the operation of the store?

A. I don't remember.

Q. All right. When you assumed these duties with respect to the operation of the store, you indicate that you wrote some checks, correct?

A. That is correct.

Q. All right, and did you have a power of attorney to write

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checks on your father's account?

A. Yes, I believe I did have the power to issue checks, write the checks, sign them.

Q. All right, ma'am. Let me show you, Mrs. Tramont, - I am showing you part of what is marked Court Exhibit Number 21, a series of checks. At the bottom the name "Dolores Tramont"; is that your signature?

A. Yes.

Q. All right, and that is a check dated October 3, 1966.

MR. CONDON: Pardon me, '56?

MR. WILLIAMS: No, '66.

MR. CONDON: I am sorry. Thank you.

BY MR. WILLIAMS:

Q. '66, correct?

A. Correct.

Q. All right, and here you see other checks dated October 3 of '66?

A. Yes.

Q. Okay, and October 4 of '66?

A. Yes.

Q. Okay, and October 5 of '66?

A. Correct.

Q. Okay. Now, does that, Mrs. Tramont, indicate you

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recollection as to whether or not you may have performed these same duties in your father's store during that period of time in early October of 1966?

A. No. Maybe it was either my dad might have been ill or I was there or just for a few hours or something like that.

Q. Well, did your mother also sign checks?

A. I believe so.

Q. Okay. Can you tell us whether or not you may have performed those same kind of duties in your father's store during anytime in 1967 other than this two or three week period in February?

A. Could be, signing checks, yes.

Q. All right.

MR. CONDON: Pardon me. I am objecting if the question is directed just was there an occasion other than which you mentioned you signed checks, but the question is did you perform these other duties, putting them all together, and I am objecting to them being all inclusive.

MR. WILLIAMS: Well, let me rephrase it.

THE COURT: Why don't you rephrase your question and go on from there.

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BY MR. WILLIAMS:

Q. Mrs. Tramont, the question is that other than as you have testified about the operation of the store during, let's say, a two or three week period in February of 1967, was there any other period or periods of time when you performed the same duties in the year 1967?

A. Not that I remember. You mean all of the same duties that I, - sometimes someone would come in, - one of his vendors, and I could pay a check or if I was there and I knew it was one of the vendors, I would pay.

Q. All right. Now, would that be, - I am talking about in situations where your parents were away and you were tending the store, so to speak.

A. I don't recall.

Q. Let me show you, for example, here is a check dated September 26th, '67.

A. Yes.

Q. And is that your signature on that check?

A. Yes, it is.

Q. All right. Here is a check dated September 26th, '67.

A. Yes.

Q. with your signature?

A. Yes.

Q. Okay. There is a check dated September 26th, '67. That has your signature?

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A. Yes.

Q. Okay. There are more checks dated September 29th. All right. Does that refresh your recollection as to whether or not your parents were away during that period of time?

A. No, it does not.

Q. All right. During the periods of time, Mrs. Tramont, that your parents were away, did either your mother or father ever give you any instructions about how to run the business?

MR. CONDON: Pardon me, do we mean in February of those years?

MR. WILLIAMS: I am talking about strictly the years 1966, 1967 and 1968.

MR. CONDON: In February?

MR. WILLIAMS: In February, yes, the two or three week period in February.

MR. CONDON: Thank you. Okay.

THE COURT: In February.

THE WITNESS: I am not sure if he did tell me then.

BY MR. WILLIAMS:

Q. Well, how did you know what to do then when you ran the store during these periods of time in February?

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A. Well, he must have told me before or from experience I knew.

Q. Okay. From experience you mean you have worked in the store many times?

A. Not many times, no.

Q. All right. Let me show you --

THE COURT: Before we get to that, you say from what he told you before. He gave you some instructions before this time and then you continued with the same procedure?

THE WITNESS: Yes.

THE COURT: What were the instructions he gave you before?

THE WITNESS: To look after the store, to look after the apartment and pay the bills, pay the bills and pay the help, deposit checks.

BY MR. WILLIAMS:

Q. Okay. Did your mother and father, - strike that. Did your father ever give you instructions as to what bills to pay by checks?

A. Yes, he did, and also the vendors would tell me too what had to be paid by check.

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Q. All right. Did you ever receive any instructions from your father as to what bills to pay by cash?

A. The same would be for that, by him or the vendors would say too.

Q. All right. Would the amount of the bill have anything to do with whether you paid by check or paid by cash?

A. Sometimes it would.

Q. All right. Now, did you ever cash checks for customers?

A. Yes.

Q. Payroll checks?

A. Yes.

Q. All right. Other kinds of checks also?

A. No.

Q. Just payroll checks?

A. I am quite sure they were all payroll checks, yes.

Q. All right. Now, Mrs. Tramont, did you ever charge any service fee for the cashing of those checks?

A. Yes.

Q. All right, ma'am, and how much did you charge?

A. Ten cents was charged but this fee was to be charged for people who would come in and just want their cashed check. Usually for a good customer you didn't bother charging them anything.

Q. All right. Did you ever accept payments from customers for utility bills?

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A. Yes.

Q. All right. Did you charge a fee for that service?

A. Yes.

Q. All right, and how much did you charge for that service?

A. I believe it was ten cents but then many times if it was somebody that was a very good customer and you knew well, you didn't bother charging.

Q. All right. This aspect of it you seem to recall quite well?

A. Yes.

Q. Now, did you receive any, - well, did anyone tell you to charge ten cents for the cashing of such checks and the acceptance of payments for utility bills?

A. Probably.

Q. All right. Do you recall who told you to make such charges?

A. My father.

Q. All right. Now, during the course of the performance of your duties or activities when your parents were away during February of each year, did you have occasion to make entries of the gross receipts or the income you took in during the course of any day?

A. Did I make entries?

Q. Yes.

A. Yes.

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Q. All right, and where did you make entries for Gross receipts?

A. In the shorthand notebook.

Q. Can you describe this notebook with your hands, perhaps?

A. Like so.

Q. All right. Let me show you what is marked as Government Exhibit Number 10; about that size?

A. Yes.

Q. All right. Now, when you made entries into a book like that, did you ever see any entries before the entry that you made?

A. Maybe. I don't, - not always, no.

Q. Do you mean sometimes there would be and sometimes there wouldn't be?

A. Well, there might have been.

Q. Mrs. Tramont, do you recall giving a statement to the Internal Revenue Service on May 28th of 1970?

A. Yes.

Q. All right, ma'am. Let me show you what is marked as Court Exhibit Number C9 and I direct your attention to the last page of that which is Page Number 11. Does your signature appear on there?

A. Yes, it does.

Q. And above it does it say, "I have read the foregoing statement consisting of eleven pages each of which I have

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initialized. I fully understand the statement and it is true"?

MR. CONDON: Pardon me. I am objecting to this, your Honor.

THE COURT: Yes. Why don't we go in accordance with the more traditional procedure, Mr. Williams, and show it to the witness to refresh her recollection rather than have read questions and answers.

BY MR. WILLIAMS:

Q. Mrs. Tramont, I am directing your attention to Page, - Page 5, Questions 51 and 52. Would you read that?

THE COURT: Just to yourself, Mrs. Tramont.

THE WITNESS: Yes, yes.

BY MR. WILLIAMS:

Q. All right. Does that refresh your recollection as to whether or not you observed entries in that book you have just described prior to the time that you made entries?

A. Well, yes, there were, but not every year.

Q. All right, I understand that. Okay, and who made those entries prior to the entries that you made?

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A. My father.

Q. Okay. Mrs. Kazmierczak, I am going to show you what is marked as Government Exhibit Number 11 which I am now opening up before you and I am directing your attention to the first two pages of that exhibit. Now, during the years 1966, 1967 and 1968, did you ever see these pages that comprise this exhibit?

A. No, not those pages, no.

Q. All right. Do you want to take a look through this and let me know whether you have seen any of these pages?

A. No, not these.

Q. All right. Okay. Thank you. Mr. Kristoff just brought to my attention I have been calling you Mrs. Kazmierczak. If I have, I apologize. Now, Mrs. Tramont, - never mind, - strike that. Let me ask the question, during the years 1967, 1967 and 1968, did you ever make entries into this book?

A. No, I did not. I believe the man who did the taxel had it at that time.

Q. All right. That is not the question I asked you.

A. I am sorry.

Q. Did you speak to Mr. Condon before you testified here today?

A. No.

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Q. All right.

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A. No.

Q. Okay. Now, did you ever have occasion to make deposits to your father's checking account during the period of time in February of '66, 7 or 8?

A. Yes, I did.

Q. All right, and about how often did you make deposits?

A. About once a week.

Q. All right. Now, did you have occasion to record the expenses that you incurred during these periods of time in the operation of the store?

A. During the current time, yes, I did.

Q. I'm talking about 1966, 1967 and 1968.

A. Yes.

Q. All right, and where did you record the expenses?

A. In a green bound ledger book or journal.

Q. All right, ma'am. Can you, with your hands, give us some demonstration, - you indicated about maybe a foot, eighteen inches?

A. Yes.

Q. All right, by about how wide or how high?

A. This, yes.

Q. That would be about eighteen inches, perhaps?

A. It could be, or fourteen.

Q. Let me show you, Mrs. Tramont, what is marked as Government Exhibit Number 12 and I ask you, number one, to take

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a look through that. Do you recognize that?

A. Yes.

Q. All right. Is that the book you were just describing?

A. Similar to it. Yes, it could be.

Q. All right. Let me, for example, call your attention to the second page under the far right-hand column it says "March", and then there are some dates 7-12-19-21 and there are figures entered after that. Do you recognize that writing?

A. 7th?

Q. Yes, all right. You see the date March 7th?

A. Yes.

Q. And there is a figure after that?

A. Yes.

Q. Do you recognize that writing?

A. Yes.

Q. Whose handwriting is that?

A. That is mine.

Q. Okay, and how about below that it says March and then 12 and then a number?

A. It is not mine.

Q. All right. How about just above under February, it has the date the 28th and a number written there. Do you recognize that?

A. Yes.

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Q. Okay, and whose writing is that?

A. Mine.

Q. And how about under February 12th and February 19th?

A. Not the 12th.

Q. All right, the 19th, that is yours?

A. Yes.

Q. Okay. Mrs. Tramont, during these periods of time, again these two week periods in '66, '67 and '68, were those periods, - those were periods of time, I understand, when your parents were away?

A. Yes, that's correct.

Q. And can you tell us where they were during those periods of time?

A. I believe they went to Florida.

Q. Okay. Do you recall during those, - during the years 1966, 1967 and 1968 whether your parents ever took a trip to New York City?

A. I don't recall.

Q. All right. Do you recall if during those two years, - if during either of those two years your parents ever took a trip to the Catskills?

A. I don't remember.

MR. WILLIAMS:

All right. May I have just a moment,
your Honor. I have no more questions.

EXCERPT OF TRIAL TESTIMONY OF DOLORES
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THE COURT: All right. Mr. Condon.

MR. CONDON: Pardon me, I just want to check some records.

THE COURT: All right, certainly.

MR. CONDON: These are the checks you were working with. May I look at them?

MR. WILLIAMS: Oh, sure.

THE COURT: Mr. Condon, I wonder, you are looking at some documents. Will it take a few minutes, will it take a recess?

MR. CONDON: Your Honor, it may. I just have to tie it together. I don't know when I will find the answers.

THE COURT: There are a lot of documents, ladies and gentlemen. We will be in recess for a few minutes. In the meantime, Mrs. Tramont, it would be better if you do not talk to anybody about your testimony. Just leave your mind free. You may walk out with the marshal and we will resume shortly.

(Jury escorted from the courtroom.)

THE COURT: We will be in recess.

(Recess taken at 2:40 p.m.)

* * * * *

EXCERPT OF TRIAL TESTIMONY OF DOLORES
TRAMONT, 2-17-76 and 2-18-76.

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PROCEEDINGS: February 17, 1976, 2:53 p.m.

APPEARANCES: As before noted.

(Defendant present.)

(Jury present.)

D O L O R E S T R A M O N T, a witness called by and in behalf of the Government, having been previously duly sworn, resumed the witness stand and testified further as follows:

CROSS EXAMINATION BY MR. CONDON: (Resumed)

Q. Mrs. Tramont, if I understand correctly, the return of this indictment against your dad was sometime in 1973 and at that time he was represented by Mr. Charles McDonough, is that correct?

A. That's correct.

Q. And unfortunately we know Mr. McDonough died and I was substituted for Mr. McDonough?

A. That's right.

Q. Mr. Williams asked you before, as I understand correctly before you testified that if you had spoken to me and you said, "No", do you recall that?

A. Right.

Q. Do you recall sometime after I got involved in the case in, I think, the spring of last year that you come up to

my office and visited with me?

A. Yes, I did.

Q. All right, and we talked over the case on that occasion and my best recall, that was the only time you were there. Was there any other time?

A. I believe it was just --

Q. Just on that one occasion, all right.

A. Right.

Q. Now, Mrs. Tramont, you are married?

A. Yes, I am.

Q. And do you have children?

A. Yes, I do.

Q. How many do you have, please?

A. Four.

Q. And, Mrs. Tramont, what are their ages?

A. They are sixteen, fourteen, eleven and eight.

Q. And so they were all, - well, I guess maybe there is a problem about one, but you had three children in '66, '67 and '68.

A. That's correct.

Q. Okay. Now, when your mom and dad were away that would you have the obligation of getting them off to school in the morning?

A. Yes, I did.

Q. Okay, and also that was there anybody there when they

EXCERPT OF TRIAL TESTIMONY OF DOLORES
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came home from school?

A. No. I had to pick them up from school.

Q. Okay, and then did you always go back to the store?

A. Usually.

Q. All right, and if I gather from what you told Mr. Williams that sometimes you were there when it was closed and sometimes you were not?

A. That's correct.

Q. And sometimes you were ~~there~~ when it was opened and sometimes you were not?

A. That's right.

Q. Now, we had some photos. I believe they were agreed upon but not marked because Mr. White wasn't here the other day so maybe I can wait a couple minutes.

THE COURT: We can mark them when he comes back.

MR. CONDON: All right. These have already been agreed upon.

MR. WILLIAMS: Yes. Go ahead.

BY MR. CONDON:

Q. And I would like you to look at these and tell me if you recall that in '66, '67 and '68 being your dad's store. Your Honor, there are some others here I want to get marked.

THE COURT: Why don't you do this, just mark
them in pencil for the present.

MR. CONDON: Okay.

THE COURT: And when Mr. White returns we will
put his stamp on them.

BY MR. CONDON:

Q. Mrs. Kazmierczak, - pardon me, Mrs. Tramont, - thank you.
The last one is 7. I want to put some numbers on these.
Mrs. Tramont, your dad's store there, the apartment
where they live is directly behind the delicatessen?

A. It is.

Q. And I would like you to look at Picture 8 and tell us
if that represents the situation when you were there in
'66, '67 and '68 fairly and substantially, and if it
does, you tell us what it is.

A. It is the way it was in '66.

THE COURT: Excuse me, Mrs. Tramont. You are
speaking to Mr. Condon but it is most
important that the jury hear you.

THE WITNESS: All right.

THE COURT: Keep your voice up, please.

THE WITNESS: I am sorry. It is the door that
leads directly from the kitchen into the

EXCERPT OF TRIAL TESTIMONY OF DOLORES
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stove.

BY MR. CONDON:

Q. All right, and now I show you Defendant's Exhibit 9 marked for identification and can you tell us if that is the way it appeared to be and the way your mom and dad, if that is the way they appeared in '66, '67 and '68, and if so, what it is?

Q. Yes, this is the way it was then.

A. Can you tell us what it purports to be?

A. Well, it is my mother and my father and the kitchen and the stove.

Q. Okay.

A. It may not be the same stove.

Q. Well, it is important. If you don't recall it as being the same stove, we want to know.

A. No, I don't believe it is the same stove.

Q. All right. 10 has got the same stove in it, all right. I show you 11 and ask you if you can tell us if that was the same during those years and if so, what it purports to be.

Q. Yes, it is the bathroom and it is the same as it was.

Q. All right. Now, that is the bathroom of your mother and dad?

A. My mother and dad and the help were also, and my mother

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washes there.

Q. Okay, and is that one of the reasons why you would be there to watch the apartment?

A. Yes.

Q. Because the help would be coming back?

A. Oh, definitely.

Q. Okay, and I show you Defendant's Exhibit 12 and ask you if it was the same during those years and what it purports to be?

A. Yes. This is looking from the kitchen into the living room and the back bedroom, and that is the way it was then and now.

Q. I show you Exhibit 13 and can you tell us if that is the same?

MR. WILLIAMS: Excuse me, just a technical problem.

I think, Exhibit 12 has been previously marked by the defendant as a handbook for special agents, I think.

BY MR. CONDON:

Q. Oh, thank you very, very much. Then if I may, to be certain, let's mark this 12 and what you said about Exhibit 12 applies to Exhibit 13 as remarked.

A. Right.

Q. And Exhibit 14, can you tell us if that purports to be and if that was the situation in the years we have been discussing.

A. Yes. It is the kitchen table, looking into the living room.

Q. All right, and will you tell us if 15 is representative of those years and also what it purports to be?

A. Yes. This is the store itself and it is the shelves and the aisles in between, as you can tell.

Q. All right. Would you tell us if 16 is representative and what that purports to be?

A. Yes. This is a cooler. Now, I don't know if this is exactly the same cooler they might have had.

Q. Then we won't use it. I show you Exhibit 17 and ask you if you can tell us if that is --

A. Yes. This is the frozen food case and the ice cream case and the shelves behind.

Q. Okay, 18.

A. It is the ice cream cabinet and then behind is the milk, beer, pop cooler and frozen.

Q. Is that the way it was?

A. Yes.

Q. In the three years?

A. Yes.

Q. All right. Now, I show you 19 and it has got a couple

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of people there that I presume to be customers, but excluding them --

A. Right.

Q. Does that substantially appear the way it was?

A. Towards the front, yes.

Q. In those years?

A. Yes, it does.

Q. And Exhibit 20?

A. Yes. This is the cookie case, the bread rack and the potato chip rack.

Q. All right, and Exhibit 21?

A. That's correct. That's the way, - the same cookies, bread, potato chips and the aisles on the side.

Q. Okay, as it appeared to be in those three years?

A. Yes.

MR. CONDON: At this time I would like to offer Exhibit 8, 11, 13, 14, 15, 17, 18, 19, 20 and 21.

THE COURT: Any objection? Mr. Condon, Mr. Knisley called to my attention that we have previously marked Defendant's Exhibits up to 13, so why don't we take those, - can we take the pictures back, please. Wait a minute, you have photos.

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marked from 3 to 10 inclusive.

MR.CONDON: I believe they are already admitted.
They are just not marked.

THE COURT: Those are different photos, 3 to
10. Mr. Klocke, can you help us?

MR.WILLIAMS: I believe 3 to 10 were photos of
the exterior.

THE COURT: These are the interior. Why not
begin marking at 14.

MR. CONDON: Should I have Mr. White do that?

THE COURT: Yes, have Mr. White start marking
them at 14. Just put your stamp over
those.

(Defendant's exhibits Numbered 14
through 23, inclusive and respectively,
marked for identification.)

(Defendant's Exhibits Numbered 2
through 7, inclusive and respectively,
received in evidence.)

BY MR. CONDON:

Mrs. Tramont, I show you exhibit 14, 15, 16, 17, 18, 22,
21, 22, went up from 14, 15, 16, 17, 18, 22 and 23.

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You have previously looked at them, have you not?

A. Yes, I have.

Q. And they substantially reflect the situation as existed there in '66, '67 and '68?

A. Yes.

Q. Mrs. Tramont, if I understand that you used to have a cash register obviously during those years.

A. Yes.

Q. Do you recall that cash register?

A. Yes, I do.

Q. Was it a manual one?

A. Yes, it was.

Q. Was it an electrical one?

A. Yes, it was.

Q. How did you operate it?

A. Every time a sale was rung up, it would just go up a spindle of numbers. There was no tape to it.

Q. All right.

A. And it just kept adding one sale to the other.

Q. Okay, and at the end of the day when you wanted to know, get a total or whatever time of the day you may have wanted to know when you wanted to get a total, how would you do that?

A. You just looked at the row of numbers that was on it.

Q. Is that what you took it from?

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EXCERPT OF TRIAL TESTIMONY OF DOLORES
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A. Yes.

Q. All right. Did you ever count the money in there?

A. Yes, I did.

Q. And would the row of numbers and the money be the same?

A. Not necessarily, no.

Q. All right. Did you use the row of numbers, - which would win out?

A. The money.

Q. The money, all right, and did you always check the row of numbers that went up?

A. No. It was always the moneys that were in the register.

Q. All right, and on every occasion would you check the numbers?

A. On every occasion, no.

Q. All right. Now, that next to the cash register was there a little plastic dish that you used to have the sales tax money in?

A. Yes, there was.

Q. And then also was there a tray that used to contain the utility moneys?

A. Yes.

Q. There was that kept?

A. That would have been to the left of the register on one of the shelves.

Q. All right, and then there also was a box where approximately

*EXCERPT OF TRIAL TESTIMONY OF DOLORES
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\$1,500 worth of cash was kept?

A. That's correct.

Q. Okay. Mr. Gisegnet, could you come here a moment, please.

Can you get that up over the top for me? Could you get that up over the top for me? That's all right.

Thank you very much. Showing you Defendant's Exhibit 11, can you tell us, does this purport to be a general scheme of your dad's grocery store and part of the apartments that went behind it where it shows the general configuration as to where the area was between the frozen food counter, - pardon me, the counter, the frozen food case and where the cash register was and the other cases and fixtures in there and the entrance back into your mother and dad's apartment to show the relationship of one place to the other; does that substantially reflect it?

A. Yes, it does.

Q. All right. Can you just, - you just told us a moment ago that you had a cash register. Am I pointing here to where the approximate place where the cash register was?

A. Yes, you are.

Q. Okay. Did you leave with my pen? I show you Defendant's Exhibit 20 in evidence and does this, - pardon my back, - does this show the frozen food counter?

*EXCERPT OF TRIAL TESTIMONY OF DOLORES
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A. Yes, it does.

Q. And is that the one depicted right in this area where I am pointing?

A. That's correct.

MR. CONDON: Your Honor, do you mind if I pull this over?

THE COURT: No. I think it would be a good idea, Mr. Condon, so the jury can see it.

MR. CONDON: Now, can you see it?

THE COURT: Mrs. Tramont, you can step down and, Mrs. Tramont, speak up so the jury can hear you.

THE WITNESS: Fine.

THE COURT: Why not step down.

MR. CONDON: Maybe I better get all these up and I won't have to keep doing that, Mrs. Tramont.

MR. WILLIAMS: While Mr. Condon is doing that, if I can make a suggestion so that the record is clear, perhaps Mrs. Tramont can mark the chart. The record will be unclear if she just says "The frozen food counter is here", and she can mark it on this exhibit.

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THE COURT:

Mr. Conlon, when the witness indicates something on the chart or the map, have it marked with a pen, please.

BY MR. CONDON:

Q. Thank you very much. Mrs. Tramont, I wonder if you could come down from the jury box and you notice these have exhibit numbers on them.

A. Yes.

Q. And you have already described them. I wonder if you could redescribe them and then show what area of the store and maybe use the exhibit number to mark with that marking pen so we know what it corresponds to. Could you just describe what that is, please?

A. This is the frozen food case and that goes toward the front of the store. That would be here. Mark the number?

Q. Yes, if that is all right, your Honor.

THE COURT: You marked the number 20.

THE WITNESS: Is that correct?

THE COURT: All right.

THE WITNESS: Now, this is the cookie rack, the bread rack and the potato chip rack. You can see the three of them, and that would be --

EX RPT OF TRIAL TESTIMONY OF DOLORES
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BY MR. CONDON:

Q. All right, put the exhibit number there.

A. That is 3. This again is the cookie rack, the bread rack, potato chip rack and the shelves on the side of the store, so it is 18. I am sorry. The magazine rack doesn't show here. It would be this part here.

Q. All right.

A. It is still a magazine rack. Can I --

Q. Just cross it out.

A. This is the ice cream case and the beer case which would be, - the ice cream case is right next to the frozen food case, 21. That's this cooler. Now, here again we have the ice cream case, part of the frozen food case, the shelves behind the frozen food and the ice cream case and part of the potato chip rack. This is Exhibit 22. Ice cream, frozen food, shelves and part of the potato chip. Here we have, - oh, that's part of the potato chip rack, the bread rack, the panty hose, the shelves along the side and then the shelves way to the back of the store and in between you can see the cold cuts, 23. These shelves, - that's going that way. I am sorry, what else, - chips.

Q. Now, these three pictures and this one you have described before. Would you tell us what they are again?

A. All right. This is the bathroom.

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THE COURT:

You are pointing to what exhibit
number, please?

THE WITNESS:

14, Exhibit 14, and it is the
bathroom which is inside the apartment.

BY MR. CONDON:

Q. Show us where that is.

A. Which is used by my parents and the help.

Q. Can you get up there?

A. I can't find it. Oh, here it is, bathroom.

Q. Can you mark that?

A. 14. Exhibit 15 is the kitchen, the table and the
refrigerator. There the help eats at the kitchen table
too, many times.

Q. The help ate there on occasion?

A. Yes, they did.

Q. All right.

A. Exhibit 15.

Q. Can you reach that?

A. Can I just mark it here?

Q. Yes, that will be fine.

A. This is the door that connects the store. It is the
door directly into the store from the kitchen and there
is the bathroom door. That's Exhibit 17. This is the
outside.

EXCERPT OF TRIAL TESTIMONY OF DOLORES
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Q. Excuse me.

A. Oh, I missed that. This is the kitchen again and it is the table, refrigerator and then you can look into the living room and the bedroom, and that would be 16. That would be up here.

Q. I am sorry, and what do these describe?

A. This is the front of the store.

Q. The number?

A. On the outside. That is 7.

Q. Yes.

A. Exhibit 7.

Q. You don't have to put that, I don't think.

A. This is from Woltz Avenue and this is the side of the store and the apartment directly behind it. That is Exhibit D6. Exhibit 4 is, - you can see the front and part of the side of the store and the apartment. Now, this Exhibit 3 is the front of the store and you can see the apartment directly above the store.

Q. All right. Now, Mrs. Tramont, before you sit down you mentioned before that there was a cash register. Could you put a circle around where the cash register would be, and there was a dish, you said, for the sales tax money?

A. That's correct.

Q. Could you circle that. Now, also that there was a cash

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box?

A. Yes.

Q. And was that ever kept in the store?

A. The cash box?

Q. Yes.

A. No. It was directly behind the store, usually in the house itself.

Q. Well, was it hid?

A. Yes.

Q. And where was it hid?

A. In the cabinets usually back here.

Q. Can you just put an "X" there. All right. I think that's fine. Thank you very much. Now, when you say you had a cash box, could you describe the box to us?

A. The box was actually a cigar box.

Q. Can you hold on just a minute?

A. Okay.

Q. Now, on occasion you would take money out of the cigar box?

A. Yes.

Q. And what would be an occasion when you would take money out of the cigar box?

A. To pay the vendors, to replenish the cash register, pay the help.

Q. Cash a check?

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A. The first one, yes.

Q. Now, when you took money out of the cigar box, was there ever a record made of money going out of the cigar box?

A. No.

Q. When you put money in the cigar box?

A. Yes.

Q. And when you put money in the cigar box, where would that money come from?

A. The money that went to the cigar box usually came from the register.

Q. And when it came from the register, did you make a record of the amount of money that went into the cigar box?

A. No.

Q. Now, did you put money into the cigar box from the register once a day or more than once a day?

A. Sometimes more than once a day.

Q. Now, money would go into the cash register?

A. That's correct.

Q. There was no tape?

A. No.

Q. So each time money went into the cash register, was any record made?

A. No.

Q. You mentioned to Mr. Williams that you would make some

EXCERPT OF TRIAL TESTIMONY OF DOLORES
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notations on a shorthand book?

A. That's correct.

Q. And would that be at sometime during the day that you would count up the money, as you said before, in there?

A. Sometimes, but usually at night.

Q. All right, and but other than that, was there any record at all made of any money going in and out of the cash register?

A. No, other than just that manual thing. Other than that there was not.

Q. Well, did you pay any attention to that?

A. Not that close, no.

Q. Well, how old was that cash register?

A. Maybe as old as I was. It was probably there when --

Q. All right, so do I understand from what you told us previously that it was the count that counted as opposed to what was on those --

A. Yes.

Q. Spindles that were up there, whatever they are?

A. Yes.

Q. So money was put into this dish. Pardon me just a moment. Will you mark these.

(Defendant's Exhibits Numbered 24

and 25 marked for identification.)

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EXCERPT OF TRIAL TESTIMONY OF DOLORES
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MR. WILLIAMS: No, Coverall.

MR. CONDON: Coverall, thank you.

BY MR. WILLIAMS:

Q. Coveralls, jeans like, coveralls, I guess. All right. Just one more headed Empire State News under February 24 and the figure sixty forty-seven, is that your writing?

A. Yes, it is.

Q. All right. Mrs. Tramont, March 1 and March 13th and the numbers that appear opposite there, is that your writing?

A. March 1.

Q. March 1 is; March 13 is not?

A. No.

Q. Okay. Now, Mrs. Tramont, let me show you what has been marked Government Exhibit Number 7 in evidence which is a tax return. Do you recognize your parents' signature on there?

A. Their signature, yes.

Q. All right, ma'am, and do you see in this in the right-hand column below where there is like this little arrow, do you see the name M. Kuzczko?

A. Yes, it is.

Q. And do you see below it says "Signature of preparer other than taxpayer"?

A. Yes.

Q. All right, and do you see the date that that has been signed?

A. Yes.

Q. What is that date?

A. 1-31-68.

Q. Okay. Thank you.

MR.CONDON: What is the date?

MR. WILLIAMS: 1-31-68, - 1-31-68.

MR. CONDON: Thank you, Mr. Williams.

BY MR. WILLIAMS:

Q. Mrs. Tramont, let me show you what is marked as Government Exhibit Number 2 in evidence which is a tax return. Do you recognize your parents' signature on there?

A. Yes, I do.

Q. All right, ma'am, and do you see below your father's signature the name M. Kuzczko?

A. Yes.

Q. And below it says "Signature of preparer if other than taxpayer".

A. Yes.

Q. Okay, and just to the right of that signature, there appears a date?

A. Yes.

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Q. And what day is that?

A. 3-28 --

MR. CONDON: I can't hear.

THE WITNESS: 2-5-67.

BY MR. WILLIAMS:

Q. Would you read that again, please, the date opposite the
signature of M. Kuzczko?

A. 2-5-67.

MR. CONDON: 2-5?

MR. WILLIAMS: '67.

MR. CONDON: 2-5-67. Thank you.

BY MR. WILLIAMS:

Q. Now, Mrs. Tramont, with reference to Government Exhibit
Number 12 and without going through this list of expenses
one by one in 1968, you also entered expense records
for February and early March, right?

A. Yes.

Q. Okay. I now show you what is marked as Government
Exhibit Number 6 which is the tax return for the year
1966 and again do you recognize your parents' signature
on that return?

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A. I do.

Q. All right, and Mrs. Tramont, just to the right of your parents' signature you see the name J. Ciapkciik?

A. Yes, I do.

Q. And below it says "Signature of preparer other than taxpayer"?

A. Yes.

Q. All right, and you see the date to the right of J. Ciapkciik's name?

A. Yes.

Q. And what date is that?

A. 1-27-69.

Q. Now again, Mrs. Tramont, getting back to what I marked Government Exhibit 12, the expense book I am now referring again, - I am referring to the year 1966 under the expenses for Buffalo Evening News and you see the date October 3 and the figure twenty-five fifty-two written in?

A. Yes.

Q. Is that your writing?

A. Yes, it is.

Q. All right, and what about the next date October 8th and the figure?

A. No.

Q. That is not yours, okay. Now, under the --

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pictures of the inside of the store.

What difference does it make when she saw the pictures before? I think we should come to an end of the examination of this young lady. Do you have anything else, Mr. Condon?

MR. WILLIAMS: I have no more questions.

MR. CONDON: I do, your Honor.

THE COURT: You do, all right. This is about the third round. Please be brief.

RECROSS EXAMINATION BY MR. CONDON:

Q. Thank you very much, your Honor. Those pictures that Mr. Williams pointed out, have you ever seen them before?

A. Yesterday was the first time.

Q. Here in the courtroom?

A. Correct.

Q. Now, just a moment ago Mr. Williams asked you if you saw this and you said, "No", and you said you saw something like this?

A. Yes.

Q. Did it appear to be about the same size pages?

A. The pages, yes.

Q. Same type of book?

A. It might have been.

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Q. All right. Anyway you can see that what you saw appears to be different?

A. No. Well, the cover is different.

Q. Okay, fine. Ever see your dad writing in such a book?

A. I don't know if I saw him with it, but --

Q. Now, I want to, a term that I was using, and I want to be certain that at least I understand how I was using it. I mentioned a spindle.

A. Correct.

Q. And in my mind I was talking about a bill you put bills on. Is there such a hook in there when the vendors come in like that?

A. Yes.

Q. Is that referred to as a spindle?

A. Yes.

Q. Okay, and when I was using and talking about a spindle and talking about putting bills on it, you understood?

A. Yes.

Q. Okay, and talking about this cash register, did I understand you correctly to say the other day you felt it was as old as you are?

A. Yes.

Q. And it was there as far as you remember when the store started?

A. Yes.

EXCERPT OF TRIAL TESTIMONY OF DOLORES
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Q. And it was a manual one?

A. Correct.

Q. All right, it didn't have a tape?

A. No tape at all.

Q. It had numbers that come up on it?

A. Right.

Q. All right. Now, were the numbers accurate?

A. No.

Q. Did you place any confidence in it?

MR. WILLIAMS: Your Honor, I object.

THE COURT: That is the end. We have gone through this again and again. That is the end of it. Step down.

MR. CONDON: Your Honor, I have got other questions on different matter.

THE COURT: We have gone over this, Mr. Condon, ad infinitum and that is the end. Mrs. Tramont, off.

MR. CONDON: May I make an offer of proof, your Honor?

THE COURT: No. You may out of the jury's presence.

MR. CONDON: Surely.

THE COURT: You are excused, Mrs. Tramont.

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EXCERPT OF TRIAL TESTIMONY OF DOLORES
TRAMONT, 2-17-76 and 2-18-76.

* * * * *

DOLORES TRAMONT, a witness called by and in
behalf of the Government, having been previously duly sworn,
resumed the witness stand and testified further as follows:

RECORDS EXAMINATION BY MR. CONDON: (Resumed)

MR. CONDON: If it please the Court.

THE COURT: Mr. Condon.

BY MR. CONDON:

Q. Mrs. Tramont, Government Exhibit 12 are the expense
journals with various vendors for '66, '67 and '68. If
I went through each year and each month and each vendor,
would it be reasonable for us to expect that your writing
would appear over all?

EXCERPT OF TRIAL TESTIMONY OF DOLORES
TRAMONT, 2-17-76 and 2-18-76.

A. Yes.

Q. When you made out checks, would they sometimes accumulate for a few days?

A. Yes, they could.

Q. I neglected to ask you one question relative to Exhibit Number 15. I guess two questions, that when you wrote in a book such as this in your father's absence, did it, and you mentioned, I believe, it had some writing by him in there?

A. Yes.

Q. On each occasion did it have writing by him?

A. No.

Q. Would you have any present recall for those three years how often it occurred?

A. Might have been once.

MR. CONDON: All right. That is all, your Honor.

REDIRECT EXAMINATION BY MR. WILLIAMS.

Q. Just one question. It may have been more than once?

A. It could.

MR. WILLIAMS: Okay.

THE COURT: Anything else?

MR. CONDON: No.

* * * * *

SUMMATION OF ROGER WILLIAMS, 2-18-76.

PROCEEDINGS: February 18, 1976, 3:30 p.m.

APPEARANCES: As before noted.

(Defendant present.)

(Jury present.)

THE COURT: Ladies and gentlemen, at this time, the evidence is closed in this case and we will now hear the summations of the attorneys for both sides. Following the summations, and this will be tomorrow early in the morning, I will charge you on the law which applies to this case.

Listen carefully to both sides. As you will recall, I told you before that what the attorneys tell us is not evidence, but you should listen carefully to what they say because they have thought very carefully about the case and there are, no doubt, insights which they will have, which will be helpful to you when you deliberate upon issues which will be presented to you.

The rules provide that the Government speaks first. Mr. Williams, you may begin.

SUMMATION OF ROGER WILLIAMS, 2-18-76.

MR. WILLIAMS:

Thank you, your Honor. Ladies and

gentlemen, Mr. Condon, Mr. Klocke:

As the Court indicated, this is the winding down, really of the lawsuit. Both Mr. Condon and I will review with you what we feel the evidence has demonstrated in this case and we may suggest to you what reasonably flows from the evidence. That is to say, we will give you our views as to what the evidence has shown in this case.

Now, certainly it has been a short trial. There have been, for one reason or another, a number of interruptions and on the Government's behalf, you have only seen three witnesses. Now, because there has only been three witnesses, doesn't mean that that is the only evidence in the case. You may recall that I originally stated to you, I think in my opening, that a good portion of the evidence in this case has been agreed upon. That is, Mr. Condon, Mr. Klocke representing Mr. Kazmierczak, and Mr. Kazmierczak himself and I have agreed as to what Mr. Kazmierczak's true income

SUMMATION OF ROGER WILLIAMS, 2-18-76.

picture was for the years 1966, 1967 and 1968 and that has been done by what we refer to as a stipulation or an agreement that this is what the evidence shows.

That is marked Government Exhibit Number 10 which is in evidence.

Now, anything that the Judge will tell you, I am sure, anything that is agreed upon between the parties, any stipulation that is entered into by and between the parties is the same as any other kind of evidence, so, number one, what I am suggesting to you, what I am saying to you is the mere fact that we only had a few witnesses in here doesn't mean that there is no other evidence in the case. As I said, a good portion of the evidence is the stipulation that has been entered into with the attached schedule.

Your Honor, if I may, I have prepared Xerox copies of this which has an attached schedule. I would like the opportunity to pass it out to the jury so when I make references to it, they can refer to their own copy.

SUMMATION OF ROGER WILLIAMS, 2-18-76.

THE COURT: You may do that, Mr. Williams.

MR. WILLIAMS: Thank you. Now, as I previously have stated to you and as the Court has said to you and cautioned you, what the attorneys say in the case is not evidence. What Mr. Condon may have said in his opening, what he says in his closing, what I have said in my opening statements to you and what I am about to say in my closing statements does not constitute evidence in the case. The evidence in the case certainly is the stipulation which I am now passing around to you, at least copies of it; the testimony that you have heard from the witnesses on both direct examination and cross examination and whatever has been marked in evidence in this case and there are a number of exhibits, certainly, that you will have with you when you retire to deliberate. For example, the various books and records, the tax returns, the chart of the store and the various pictures of the store. Those are all in evidence and should be considered by you and you will have them.

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Now, referring to the stipulation itself, if you turned back to following Page 6, you will see a schedule there for each of the years in question and if you look at Line 34 which is well down the page, you will see a heading called "Corrected net profit in business", or the net profit Mr. Kazmierczak got from his business and you will see that in 1966 that it was some \$13,000; that in '67 it was some \$21,000 and that in 1968, it was some \$11,000. Mr. Kazmierczak now agrees that that is the correct income for those years in question.

If you take a look at the tax returns, for example, in the year 1966, Mr. Kazmierczak reported a net profit of some, just roughly \$6,500; for the year 1967, it was roughly some \$4,000, and in the year 1968, it was roughly some \$3,500. That is \$3,500 as opposed to what Mr. Kazmierczak agrees should have been \$11,000, as opposed to \$3,500.

Now, all these figures as to what his actual income was, what his actual taxes,

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tax liability was are all taken into consideration in these computations and you will note, for example, that from the schedule that you are now looking at, if you take a look at Line 23 and Line 24, it takes into consideration inheritances that Mr. Kazmierczak had in 1966, 1967 and he is given credit for that.

Now, you recall from the testimony of Mr. Pasquarella, who had talked with Mr. Kazmierczak on two occasions, I believe it was October 7th of 1969 at his store and again on October 28th of 1969 at his store, and when I say "at his store", it may not have been at the store. It was either in the store or back in his apartment where he lived, but in any event, Mr. Pasquarella testified he talked to Mr. Kazmierczak on each of those two occasions and Mr. Kazmierczak said to him, "Well, I take out \$90 cash each week and that we use for household expenses and other living expenses". Now, if you consider that, that is a total for the year of \$4,680 that Mr. Kazmierczak says is his living expenses and

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personal expenses, that's what he expends each year.

Well, that sum of money alone is, number one, it is greater than what he has reported as his net profit for the year 1968. As I indicated, he reported some \$3,600 for that year. He admits at the very minimum expending forty-six eighty on personal and living expenses. If you consider that forty-six eighty that he says he expends for personal and other household living expenses, that leaves a balance of roughly \$8,500 that he has for 1966; roughly \$16,500 for 1967 and roughly \$6,500 for the year 1968.

Now, we know, for example, from the evidence, from the stipulation, that none of this money that I have just mentioned to you was used for business expenses because that is taken into consideration in the stipulation. The defendant has admitted what his total business expenses were and that as a matter of fact, appears on the second page of this schedule. You will notice at Line 5 which takes into considera-

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tion the actual business expenses paid for by cash which is roughly one hundred one thousand in 1966; one hundred six thousand in 1967 and one hundred twelve thousand in the year 1968, so he is given credit for that.

Under these circumstances, there is really only two things that the defendant could do with this additional sum of money. That is, roughly \$8,500 in '66; \$16,500 in '67 and \$6,500 in '68. He could put it in the bank or he could write checks for personal expenses. He can do one of those two things.

Certainly, I suggest to you if he put it in his bank he would certainly see at the end of the year he had a much higher balance than he had at the end of the previous year. If he spent it by writing checks for personal expenses, I suggest to you that certainly he would know that. He would certainly know what checks he has drawn and for what purposes.

If you look at the total picture for the three years in question, Mr. Kazmierczak

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admits that he has spent, in cash, some, roughly, \$14,000 for personal living expenses and in addition, he either increased his bank accounts or issued checks for personal reasons in the amount of some \$31,500 which would be the total figure for those three years. That is a total of some \$45,500.

Now, in addition to that, Mr. Kazmierczak failed to report certain interest income that he had. For example, if you look at Line 36 on the first page of the schedule, you will find reflected there figures for interest income. Now, if you compare that with the tax returns that are in evidence and compare it with the tax return for 1967, which is Government Exhibit 4, and the tax return for 1968 which is Government Exhibit 6, you will notice a difference in the tax report on those returns, - I am sorry, on the interest income reported on those returns as opposed to the interest income on Line 36 which Mr. Kazmierczak admits he has and the difference

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is some \$161 in 1967 and some \$785 in interest income alone for the year 1968.

Now, in addition, as Mr. Condon indicated in his opening remarks, and as Mrs. Tramont testified, during the three years in question, '66, '7 and '8, there was a period of time, generally, from sometime around the middle or towards the end of February, early March when the Kazmierczaks

took a vacation. I don't suggest to you certainly that there is anything wrong in that. Everybody is entitled to a vacation.

No doubt you take vacations and I take vacations. Most people do. That is not the point, but I believe, as Mr. Condon indicated that during those vacations they would spend some \$600. You add that on to what is otherwise,- what has otherwise been expended and you come out with some figures that are well in excess of what he has indicated in his tax return as his net income from the business.

Now, as I have indicated before and as the Judge has said to you, what we attorneys say is not the evidence in the

SUMMATION OF ROGER WILLIAMS, 2-18-76

evidence in the case. Now, you have heard Mr. Condon's opening statements and, for example, he said that Mr. Kazmierczak, or the evidence will show that Mr. Kazmierczak worked as a laborer someplace in the Buffalo, New York area and that is where he met his wife while she was slicing bacon. I don't know whether that is true or not, but certainly there is no evidence of that in this case and that can't be considered by you as evidence. He also said the proof will show that he operated the store seven days a week from 6:00 to midnight. Well, it is your recollection that controls as to what the evidence is, but my recollection is that Dolores Tramont testified that the store during the years in question was operated from 10:00 in the morning until 11:00 o'clock at night. In Mr. Condon's opening, he also said to you that the proof was going to show that Mr. Kazmierczak was the only one that operated the store. Well, I think quite to the contrary, the proof shows, through the testimony of Mrs. Tramont, if you take a

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look at the payroll records that Mr. Kazmierczak maintained, you will find, that he had some three employees; that Mrs. Kazmierczak herself worked in the store from time to time and that Mrs. Kazmierczak, from time to time, worked in the store.

Now, Mr. Condon's opening also talked about the various illnesses that Mr. Kazmierczak had, operations that he had, operations that his wife had. Well, I can understand that and a lot of us have health problems and apparently, Mr. Kazmierczak has his share of health problems, but with few exceptions, there is very little in the proof to show what his health problems were or what operations, if any, that he had.

Now, the Judge, I think, will instruct you that lawsuits, this particular lawsuit is not to be decided upon by some sympathy that you may feel for a person because he may have some illnesses. A lot of people have illnesses. Mr. Condon apparently has some hearing problem. I know I have got a broken toe. We still

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do our jobs. That doesn't interfere with our jobs. We still go along and do our job to the best of our ability so that really is not an issue in this case.

In any event, what I ask you, what does this have to do with whether or not Mr. Kazmierczak has filed false and fraudulent tax returns and has substantially understated his income. That has nothing to do with the issues in this case. The issues in this case are what Mr. Kazmierczak did or did not do.

Now, we also have a lot of, in this case, a lot of lovely charts and photographs of the inside of the store and pictures of the outside of the store. Again, some of them are in color. They look very lovely and you will see them in the jury room, but again, what does this have to do with whether or not Mr. Kazmierczak has willfully attempted to evade or defeat a large or substantial portion of his income tax. I suggest to you it has nothing to do, nothing to do with it.

I anticipate, perhaps, that Mr.

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Condon will indicate to you in his summation that well, here is poor Mr. Kazmierczak he has only had a sixth grade education, never knew how to file a tax return; really didn't know what he was doing regarding the operation of his store. Well, again, ladies and gentlemen, let me just ask you, if I may, to call upon your own experiences and use your common sense and you know just by virtue of the fact that some of us have less formal education than someone else doesn't mean we are not smart, doesn't mean we are not intelligent; doesn't mean we are not capable of doing things. That is far from the truth and you ladies and gentlemen know it.

Mr. Kazmierczak certainly maintained his own payroll records and what else did he do in connection with the operation of the store. He did a number of things that certainly indicates that he had a good grasp, he had a good business mind, he knew how to handle his affairs, he knew how to keep records, he maintained an expense record for every year; he maintained

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gross receipts for them and he maintained his payroll records. He did a number of other things also and from the stipulation, Page 4 of the stipulation, starting at Item Number 11, in each year he made better than a hundred deposits. He cashed 1,600 checks, 62 separate items of deposits in various amounts. He deposited a total of sixty-nine thousand in currency. He deposited some \$93,000 in checks. For the next year, he did substantially the same thing. He took in as payments, utility payments from customers, some \$67,000 in '66; some seventy-two thousand in '67, some sixty-eight thousand in '68. On each of those bills, he collected the money, he receipted the bill, he deposited the monies in his bank account; he segregated the bills, he watched for due dates, he totaled the bills, he drew checks and he forwarded the bills to the utility companies on three separate dates to three separate utility companies. He did all of that. This is not a man who, as I think Mr. Condon will try to show you, is

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a poor individual who simply doesn't know what he is doing.

Now, Mrs. Tramont has testified and she has been on the stand for some time.

Mrs. Tramont, as you know, is the daughter of Mr. Kazmierczak and I appreciate and I know you realize and there is no question about it, she is put in a rather difficult position. It is an insensitive kind of position, there is no question about it, but some of her testimony, I think, is certainly interesting. She has testified that during these periods of time, in February to March of each year, she worked in the store. She did certain things.

She made certain entries. She cashed checks, et cetera, et cetera. What is interesting to note that, number one, she had the power of attorney to write checks on her father's checking account and she wrote checks in payment for vendors and certain other checks that she wrote in the operation of this business and certain things she paid for in cash and she recorded those items in what she described

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as an expense book which was maintained for each year and these are photocopies of that expense book and you recall I showed her certain entries for each year and she recalls especially during February and March that she made certain entries in these books.

Mrs. Tramont also, in addition to making entries in those books for payments to vendors, she was pretty much in charge of the store during her parents' absence. I shouldn't say "pretty much". The evidence shows, I suggest, she was in charge of the store with respect to its operation. She cashed checks for customers. She accepted utility bills for payment. She paid the help in cash and she did a number of other things. She also recorded the gross receipts for each day. Now, this is not the gross receipts book. This is blank. Certainly her testimony is that this is like the gross receipts book that she knew in which she made entries and you will recall her testimony that many times she saw entries in there prior to the entries that she made.

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She saw entries, her father's entries that were in there prior to the time she made entries.

Well, what does that mean? Let me say this to you and I think you are going to hear this from Mr. Condon, the reason she made the entries there was because this so-called gross receipts book, and again, this is a photocopy, but this book, and these are photocopies of the pages, but this big book that she described, was at the accountant's or at the tax preparer's and that is the reason why the entries were made in this.

Now, remember one of the last things that Mrs. Tramont said, finally, was that during the years in question, that she did see this lying around the store, but what else do we know about that. Let's take a look at the tax returns and from her testimony, she was operating this store from sometime around the middle of February to the forepart of March and she first said, "Oh, this was at the accountant's during that period of time and that is the explana-

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tion as to why entries were made in this little book and not in that gross receipts book".

For example, Government Exhibit Number 4 in evidence, which is the tax return prepared by Mr. M. Kuzczko, when, - on January 31 of 1968. That is when he prepared it. When was it signed by the Kazmierczaks, - January 31, 1968. That tax return was both prepared and signed the same day. Now, I ask you, would the accountant keep, or the taxpayer keep all those records after that date for a return that is already prepared, already signed.

The tax return for 1968, the same thing, marked Government Exhibit Number 6. When was this return prepared by Mr. J. Ciapkzik, - it was prepared January 27th of 1969. When was it signed by the Kazmierczaks, - January 27, 1969.

This, ladies and gentlemen, is not a case of underestimating income simply by failure to charge dimes for the cashing of checks. Sure, you have heard that testimony. Mrs. Tramont said, "Yes, I

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cashed checks for good customers and those good customers I don't charge, other times I do". That is not what the case is about. I suggest to you that where the underreporting and a substantial underreporting of income comes is from this; I suggest to you that what has happened in this case that Mr. Kazmierczak makes his entries each day for gross receipts in a book like this. Not this one, but in a book like that and then there comes a time when he transfers those figures to this book. The exact figures, no, \$40 less, \$50 less, \$60 less, whatever. That's why Mrs. Tramont never made entries in this book.

Does it make sense to you any other way? Why would Mr. Kazmierczak give his daughter full power and authority to write checks on his account, to operate the business, to make entries into the expense book, to cash checks for customers, to accept payments for utility bills, to pay the utility bills, to do all of this, but not to make entries into this. It doesn't make any sense any other way I suggest to

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you.

Now, you will see some other of these defense exhibits. The drawer from the cash register, at least a drawer that is similar to the drawer that is part of the cash register that is maintained at Mr. Kazmierczak's delicatessen; a cash box that is used to put in monies for utility payments. At least that's what I recall what the testimony was, but again, I caution you it is your recollection that counts, not mine. A little dish for the sales tax receipts, a cigar box or a box like this in which the \$1,500 was kept somewhere back in Mr. and Mrs. Kazmierczak's apartment and there has been all kinds of testimony about people taking from the cash register and putting it in this cash box and taking it out of here and putting it in there and making notes, making little scratch notes, et cetera, et cetera. Mrs. Tramont has testified that when she was running the store that there were times when there would be too much money in the cash register and she would take it out and

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she would put it in the box, put it back in the apartment. She told you there were times when customers would come in and they wanted their checks cashed and she would cash them and sometimes she would take it out of this box and sometimes she would take it from the cash register and there were a lot of times when she paid the vendors by cash and sometimes she would take it out of this box and sometimes she would take it out of the cash register. Now, remember her statement about somehow money wins out, add up what is in the cash register at the end of the day and that's what your total sales or gross receipts are. Now, again I ask you, use your own common sense, ladies and gentlemen. Can you believe that Dolores Tramont and Mr. Kazmierczak actually thought that whatever was left in that cash register was the gross receipts for the day. You have got a cash register that has this, - Mrs. Tramont described it as some kind of a cylinder. I think that's what she said, but it added total sales. You would have

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a running total and you recall she testified from time to time just to see how she was doing, she would take a look at it to see what the total sales are for the day. They had that. At the end of each day, Mr. Kazmierczak knew what his total sales were. That's what the total take is for the day. That's what the gross receipts are.

Don't believe that Mr. Kazmierczak thought his gross receipts were whatever was left in that cash register at the end of the day with all this money going out of there. No, he knows what his gross receipts are. It is common sense. Everybody knows that. It is rung up at the end of each day.

I have already reviewed with you what the difference in income was and you can see that there is a big, big difference for each of the years in question and what about the additional tax that was due. Well, again, from the stipulation on Page 3, Paragraph Number 8, for 1966 the additional tax was some \$1,400; for 1967 the

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additional tax was some \$3,800. Now, that is not the total tax. That is the additional over and above what Mr. Kazmierczak originally reported, and for 1968, it was \$1,800. That is, - as I said, that is the additional.

If you look at the tax return for 1968, - In 1968, he reported a tax of \$827. In 1967, \$918 and for 1966, approximately \$1,400, so you can see, for example, in 1966, the additional is fourteen. He reported fourteen, half, and so on.

I may have an opportunity to comment upon Mr. Condon's summation. I may not, but I want to thank you for your attention during the course of this trial. I want to thank you for your attention that you have paid to me and your consideration that you have shown to me during the course of my summation. Again, I simply want to say to you, and suggest to you as to what the proof shows very simply this, as I said, this is not a case of underreporting by charging dimes for the cashing of checks. That is not what this is about.

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This is what I suggested to you before, the maintaining of these separate sets of books wherein the one, the accurate figure is reported and this one, something much less.

Now, all the figures that were used, - that is, how do we determine what Mr. Kazmierczak's additional income was, his additional cash deposit, his additional expenditures didn't come from his books and records. It came from his bank accounts. That's where we determined how much more income was involved and how much more tax due was involved.

Now, certainly, everybody makes mistakes. Everybody is entitled to make a mistake. It happens to you, it happens to me, it happens to everyone, but I suggest to you this was not a mistake, this substantial understatement. It is not by inadvertence. It was by plan, it was by design. Some mistakes are accidental, no question about it, some are intentional. Mr. Condon may point out to you that in the stipulation, the Government has admitted

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that there were certain mistakes in originally compiling all the information that comprises the schedule that is made a part of the stipulation and there is no question about it. Some of the mistakes were in favor of Mr. Kazmierczak. Some of the mistakes were against Mr. Kazmierczak. For example, Mr. Kazmierczak bought an adding machine in 1967 and he paid \$120 for it. Now, there is no question, under normal tax principles or accounting principles that should be what we call capitalized, depreciated over a number of years. In this case, the Internal Revenue Service decided they would give him credit of one year, all this expense in one year, in Mr. Kazmierczak's favor. Other things, as I have indicated, were not in his favor. For example, the IRS, and there is no question about it, they failed to give him some credits for checks drawn to cash on some, I think \$700 in one year and \$1,200 in another year. By the same token, they were for items like rent that Mr. Kazmierczak received to my knowledge from

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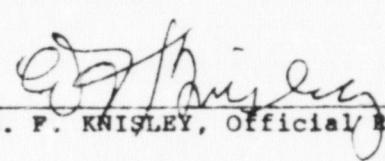
the apartments upstairs. The Government never charged him with that, but it is now included in the stipulation as something to be considered.

Again, ladies and gentlemen, I thank you for your attention and as a final thing, I want to say, and the Judge will certainly tell you this, that we are dealing with three separate years, 1966, 1967 and 1968, and you should and you must consider each year separately.

Thank you, ladies and gentlemen.

* * * * *

I certify that the foregoing is a complete and accurate transcription of my shorthand notes taken herein.


E. F. KNISLEY, Official Reporter, USDC, WDNY.

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MR. CONDON:

Ladies and gentlemen, if you will just let me get organized for just a moment here, I want to have these things that Mr. Williams is talking about in view.

I have been trying to find it, to get seriousness about this case because I just don't find it to be that serious. Maybe I ought to settle down a bit about it because I might be misunderstood, I guess. It is really a serious matter to Mr. Kazmierczak and kind of looking at the gravity of the Government's case and I guess because maybe I have been a little offhand about it I should be criticized and it is proper. I would like to express to you that I choose not to have this lawsuit in anyway, if it be for desperation or anything else evolve on some argument between a good chap there like Roger Williams and myself. I have been trying to keep count of all the times my name was mentioned. I think a lot of Mr. Kazmierczak but I wouldn't like to be one a defendant in this case. I am not

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on trial and I don't know of anything except one, and that is apologize for and explain in this case and I am sure you will recall more than I do the things I want you to do in this case. I guess more than anything else, I would like to have you understand that we are dealing, of course, in a criminal case with a reasonable doubt and what I think is most significant about that in this case is not just the definition and I can't over-caution you that any expression of law must, of necessity, come from Judge Curtin. It is a little difficult to talk about the law or the facts in the case without alluding in some manner to the law, but if you have a doubt which is reasonable, one you can't explain, I presume one that in a serious matter would make a person pause, and if you have such a doubt, Mr. Kazmierczak is obligated to be acquitted by you. It is not a choice. You must, but reasonable doubt comes not only from the evidence, but from the lack of it. Not only what was done, but what

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wasn't done. Not only what was proved but what wasn't proved. Not only what could have brought into the courtroom, but what wasn't.

The Government worked two and a half years on this case. Condon will have you believe that he is not the brightest guy in the world. You don't think in those two and a half years all those regular customers that went in there weren't ticked off one after another, do you? You don't think for a moment every vendor wasn't interrogated, talked to, interviewed, memorized; you don't think all the banks weren't gone to. If they had one person, one that come in here and talked about his business aplomb, his sophistication, his ability to do all these things, you can be confident you would have heard it, positive you would have heard it. Oh, no. The facts, the facts are all I ask you to rely on.

Now, I guess in certain ways it could be seen, if one could choose to get in an argument with the United States Attorney

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General's Office in this instance because I truly on my opening said more than I ended up proving. There isn't anybody that has ever been around a courtroom knows when that is done that the first thing that the lawyer, when he is up, has to explain that, straighten it out, and I suppose it is good strategy to discuss that rather than the proof, but seeing it has been brought up, let's discuss it because you can be certain it was discussed before we got into this in front of you right in the court. Why, because we don't know how far a lawsuit is going to go and you are obligated to give an outline to the jury what you are going to prove and then as a matter of fact, that sometimes you will hold up short because in your judgment there isn't any point in going any farther and then you come back to the people and say when I talk to you about thus and so, slicing bacon, working as a laborer, doing all these things, I didn't prove that so you can't take it into consideration, and I want to say, and

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nobody has to believe, let me point out, we in any case, but especially in this one, would ask you to take into consideration anything that wasn't proven, but yet you know that's the very essence of what I am talking about because there is another rule. Not this rule about reasonable doubt, but burden, and of course, many of you people that has worked the way we know you have from what you have told us when we were selecting you, know what a burden is and it has to be carried by the Government all the time, never stops, it never shifts, and simply what I mean by that is that it isn't bad if the case or the proof or such that it generated in your mind a reasonable doubt, you say, "Gee, the defendant, he could have got up there and testified about that and he didn't and therefore, it makes me feel now you are letting the rules slip". The rules are important so that everybody should be tried the same. In other words, the name is Kazmierczak, Williams or Jackson, but you know not only the rules

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will be the same, but the situation of the proof must be the same and the jurors will treat it the same way and so that's why various decisions are made to do or not do certain things. Another rule ~~and~~ that is that the defendant is presumed to be innocent. To those of you who have never been a juror before, it undoubtedly is the first time in your life you have ever, ever been asked to presume anybody innocent. I have got a good number of children and it is not unusual that I will come home and I will be told by someone that Matthew didn't do thus and so and he is my own flesh and blood, but Matthew is in trouble. I don't presume him to be innocent and it is not unusual that someone I got a regard for walking down the street will tell me, "See so and so over there, this and that happened". I give a little thought to that. Now, I don't automatically presume the person to be innocent. I don't know anybody I have ever presumed to be innocent in my life. Never been a juror either, but that

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is what I have to do and that is what you must do, and it doesn't end like now. It hasn't ended at any point during the trial. As a matter of fact, even when you go up into the jury room the only time that that presumption can possibly be lost by Mr. Kazmierczak is when and only if the credible, believable evidence that is proven here, - what somebody says in opening or closing is proven here and can eliminate from your mind every reasonable doubt. Why is that important? It is because we are talking about the proof that the Government brought in here and that's all we got, their proof, interesting. The defendant, except for witnesses dealing with his character and reputation have introduced no evidence and I would just like to in passing comment upon that just a moment because you see that itself can create a reasonable doubt and it is important. It is important because people, regardless of how you learn it, of how you know it, and what I believe you get from a person from the lips of others

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and in a variety of ways, you know their reputation and as a result, they come into the courtroom and they pass what the community thinks on to the jurors. Great danger in that for a defendant, tremendous because although you know that Mr. Kazmierczak not only has never been convicted, but never charged with a crime in all his life. Now what you tear open and lay down is that he has an excellent reputation in the community for truth, honesty, integrity and business. You put that in issue, - criminal record. As a matter of fact, if it isn't mentioned, the defendant didn't take the stand, you can't even mention it, but any act of misdeed, anything that would show that reputation isn't true and honest and correct, the Government can bring in.

THE COURT:

Excuse me, Mr. Condon. It may be the state rule but it is not the rule here. The Government is limited as to what they can bring in and I think that we cannot make too much of that.

MR. CONDON:

I am sorry, your Honor. I didn't

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know that that was the rule.

At any rate, it is an important factor because it can in and of itself create a doubt that is reasonable.

Now, you might recall on my opening I mentioned, and it hasn't been mentioned since, that what we are dealing with here is circumstantial evidence and that is evidence that you can draw an inference from and in this particular case, you have a total case of circumstantial evidence. You have to infer and you have to infer something and that is a state of mind.

Now, I think that there has been a criticism to you, to you about these things, that there has been no objection by the Government about these pictures coming into evidence, but apparently to you now there is something the matter with them. I feel sorry and I apologize to you that the original cash register that was back there at that time that was so old and antiquated that predates the acquisition, as I understand it, of that business and the birth of Mrs. Tramont

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that you haven't seen. I think it is important when you are talking about circumstantial evidence to have an understanding of exactly what the situation is, to know what kind of a store it is, to know what it looks like, to know what people were involved in and to know the system of accounting that we had here that you haven't heard a criticism of and there can't be, - interesting, there can't be. That rudimentary, elementary basic system you haven't had a word of complaint about. As a matter of fact, they extol it. He is a great businessman. Why, he knows all these things. Look at the figures, the deposits in the bank. He makes out a deposit slip when he goes over there. His daughter has a power of attorney. It wasn't introduced here in evidence. It doesn't make sense. She does everything else. What else, an expense book. That is the only book. She writes checks and the people come in and that is the whole bookkeeping system. Let me explain to you why there can't be any.

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criticism of their system, of a system that leaks like a sieve.

Very simple. All the records, and say not his records, - all are his records. They come in and Mrs. Tony, who is incidentally, talking about failure or proof, never testified. Mrs. Tony that heard every word that Mr. Kazmierczak said, not once but twice, never testified. Remarkable. Mrs. Tony went into his store and Mrs. Tony found that if you take, and something I dare say you never did in your entire life, and I dare say Mr. Williams never did in his entire life, added up all the amount of money that went into the bank and then added up all the amount of money that was paid out in cash and got a total and gives him credit for some bills and then takes the gross sales that he had in his book and correctly so has never been refuted from the very beginning. Think there is a problem here. Maybe even someone says the word "mistake". I don't know, but as a result he had a tax due. No one ever quarreled with it.

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Now, when we talk about the records, that first day, and you can remember this, Mr. Pasquarella came in and asked for his bank books, his record that he had, he gave to him, no problem. Well, nobody can complain or was there to complain about this business tycoon with a great system because if they did say it was elementary, they did say it was rudimentary, if they did say it was prone to disaster and mistake, there goes the case, but one thing that hasn't been mentioned, anytime that you have ever heard of a case like this ever, that money is missing. That's when I was apologizing to you at the very outset about the there won't be any Swiss bank accounts, there is not going to be any gals with sables and furs, there is not going to be any condominium anywhere or a yacht or a boat or a secret bank account or concealment of any assets. They are all here.

They got them all from Mr. Kazmierczak's records, his bank records, his own records. They are there and it is exactly the way

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that they did business, that in the transfers I think it is obvious that they had problems. They put it all in the bank. Well, you know, just good common sense. If it is good common sense if you want to start out evading your taxes you don't let everything out so that anyone who comes in can sit down right there and find it. That's where they found it, right to there, what he turned over to them, so I guess really that you should think about things like this and that why they are in there, and the reason is, you know that store and the reason we are here is because if you know, for instance, Mr. Kazmierczak's cash box, but you don't know it is just a little cigar box. You remember with Mr. Pasquarella, I want to see those pictures. I don't know anything about them. I was never in that delicatessen no way. I don't want to know anything about it. You see, he spent two and a half years on this case and he spent two and a half hours in the delicatessen, he would have known the problem. Oh, come on.

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He picked up records there in just a couple of minutes and one thing or another, but you see then I would be able to ask Mr. Pasquarella, "Well, you saw this box, right, and they had that back there and when they made change, how did they handle that, and you as a graduate in Business Management, you who went down to Washington and took training, you with all your expertise with the IRS, you who even when Mr. Kazmierczak told you that he would take money out of the cash register", - remember that \$50 check he was talking about and I was back here with the hypothetical and I said, "Now, he takes and cashes a check and takes the money out, right, - yes, - out of the cash box and he wants to keep \$1,500 in the cash box and he takes \$50 out of the cash register, so it makes that amount up, - yes", and can you remember those little words at the end of the day. Now, Pasquarella just put them in. They weren't in his memorandum or his records. He told you up here, but of course maybe if he would just have

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spent a half hour seeing how they operated, he would have known the that occurred, or, you know in two and a half years they must have found out something. They must have known something. There must have been somebody from that operation that they could bring in here that would say something. Not a one, not a one. Gee, what was he doing all that time, what was he trying to find out. Now, if the situation leaks, if the situation is prone to error, wouldn't you think that was the first thing that they would have wanted to find out. Now, the interesting thing about circumstantial evidence is you take a set of facts and if they infer a reasonable inference, surely you can take it, but what if the same set of facts go in different ways, one towards guilt and one towards innocence. You have a choice, and you know that is a problem that we are interested in because although you are obligated to presume the defendant as a matter of law to be presumed to be innocent, the problem associated with it

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is you can't find him innocent. You can only find him guilty beyond a reasonable doubt or acquit.

In other words, he can be ninety-nine per cent guilty and you just acquit, you don't find him innocent. You just find that the people haven't proven their case beyond every reasonable doubt.

Why, his income tax. He put down here his net profit, what his net profit was. He did. He knows how to make out an income tax. Who says he does. Now, I admit and I want you to understand very clearly that when it comes to Mr. Kazmierzak, that those people who made out those tax returns are dead, but because they are dead doesn't allow anybody, including the Government, to infer he knows how to make out his income tax returns. Where do they get that evidence in here? See, you know you have got to go over these things carefully and you got to scrutinize. Remember when it was pointed out here, "Look at this, Mr. Kuzczko, January 31, 1968, no books at the

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accountant's now", and then look at this, Mr. Ciapkciik, January 1-27-69, no books were at the accountant's there, right. Well, let's look at this and see if I have got it right. My, March 28, 1967. We just haven't heard that mentioned here with the same amount of vigor, but more importantly, when was it signed by this gentleman, February 5th, '67. Gee, the tax preparer signed it in February. Mr. Kazmierczak signs it over a month later. My, why wasn't that brought out with the same vigor by the Government as it was bringing out this other point. Well, if Mr. Williams is going to come back and explain all that to you, but while he does that, let's just think about something else for a moment.

You know and I know when you pay your income tax, when you send it in, you send a check and you can rest assured they have been through for this year every one of his checks, and if you don't think so, remember when in talking to Mrs. Tramont up there on the stand, this check and that

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check, - oh, yes. Well, is the date he signed that, that was the date that the check went in and that was the date that it was done the check would be here. You see, a reasonable doubt not only comes from the evidence, but it is the lack of evidence, so you can be certain, no doubt about it, that if they were signed on that day, but I don't think really that is the thing here, and I think there are many answers that truly will immediately come to your mind and what I mean by that is one, that very simply, thank God, I don't know about you, but when you are busy and you have got to go someplace, you sign it first, and maybe one of these people have signed it. I don't know, they are dead, but maybe also that it was signed, it was done and everything was just fine, but you see, the important thing about this, one of the many notebooks that they had there in the office, - pardon me, not in the office, that shorthand book notebook such as Mr. Knisley has got here that they sell in the store, she said she

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believed once, and she may have believed more than once, that there was some writing on it beforehand, and of course on those years that we are talking about in February and March, the ones that weren't pointed out to you, the other books could have well been at the accountant, not only because Mrs. Tramont says so, but Mr. Pasquarella says so, that you would have to use some temporary book.

Now, it is simple, I think, as you can see it, bound together, and of course it has been Xeroxed and pulled apart and one thing and another, but it is all together, and it goes on for years. You have only got the three tax years involved here. You can't use this. You have got to send that to the accountant for all the back years, or the tax preparer, whatever he is, right up to the present date, so you have got to use some temporary record, so with the expense, and we don't have a good example of that here because we don't have, - it is not one book. It

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is three separate books. This is 1967
when they are doing the '66 return, the
'66 books go and you still have your
'67 here and you are using the temporary
thing. That is one thing. That necessarily
isn't inconsistent, but to me it isn't
the issue.

I don't want to unnecessarily take
your time, but I just can't believe I
was the one that only had an upbringing
like this. I am positive of one thing,
that my parents, - I was an only child, -
that they love me very dearly and I can
recall one time when I was a small child
and economically things I think were
different all over, but I took my dad to
the doctor and it was a doctor on East
Delavan Avenue and we went in there and
a woman come out and said at this particu-
lar time "Mr. Condon, where do you work?",
and my dad said, "Unemployed". My dad
had a job with the City and I was kind of
astounded because right in front of me
my dad lied and he could be kind of a
gruff guy and I said, "What did you say

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that for", and he said, "I am just as sick whether I am working or not working and they are going to cure me just as fast, so what is the difference whether I work or not".

There was a drugstore in our neighborhood that was called Hertzels and another called Alfiaries right across from what used to be the City Hospital and then the Meyer Hospital, Sussex and Grider, and every Sunday coming after mass from St. Bartholomew's we would walk in because it was a great place. It was a great place because graduation presents for all the Condons were bought there and also that on Valentine's Day there was a lot of candy and on Easter there was a lot of candy and I used to get candy when I would go in there with my dad and my mother, but one time on Mother's Day there was a great display, a tremendous display and it had a great big box, a ten-pound box of candy and it was the center of the display and I remember my dad was the son of the walk because he

brought that home for my mother for Mother's Day and the only thing that was still intact about it as far as this case was concerned was that that box was a metal box and my mother treasured that box and it used to stand on top of her bureau and if she as much as went out to water the lawn, that box got hid, and they both had a fine life, but I can recall that when she went to the hospital, that she went out on a stretcher with the box and as far as I know, never anybody got in the box. The priest got it in the hospital, not me, and later on it was given back to her, but ultimately, God love her, my mother died and in there was all her financial secrets, all the loans and all the pay backs and some cash and so forth she inherited from my dad, and for some reason she didn't want me to know what she inherited. The point that I am attempting to get it, that I have found a lot of people, for whatever it is, don't want anybody to know how much money they are making and don't want their children

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to know for some reason or other, how much money they are making. It is private and I am sure Mr. Kaczmarek didn't want his employees to know how much he was making or taking in and choose not to have his daughter.

Now, you can draw some sinister conclusion out of that, that therefore he is a tax cheat and I guess that is an inference you will have to draw one way or another, but I think that that by far, more than anything else, explains that when his daughter was there doing everything, power of attorney, writing checks, handling the books, the expense book, didn't do those, the one thing, enter in the gross. That's right, that's right. There was an attorney here in town called George Wannemacher that I worked for when I got out of law school, president of the bar Association, and George Wannemacher, I worked in his office for a while and I was fresh out of law school and I knew what I thought was some pretty good things about estate tax and so I advised one of

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His clients to make arrangements to start giving the money to the children so they could avoid the inheritance tax and he came in and he read me out and he said, "As long, as long as you work here, you will never advise any client to give a penny to one of their children until on death. A transfer of funds was a transfer of respect, and remember that", so different people feel about things in different ways, but I don't think anybody can suggest that there wasn't anything at all that Mr. Kazmierczak did not do to cooperate with the Government.

Now, I don't say that. I believe really that Mr. Pasquarella says it and Mr. Knisley was good enough to get for us, and Mr. Williams had a chance to review this in part, all the testimony of Mr. Pasquarella and I would like to read to you a few things that he has said, but one on Page 78, and this is at Page 7, I asked Mr. Pasquarella to follow me, "but again, there was never at anytime, - there was never any time of day, if it

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was before or after or anything, there was never any time frame or place that this was done at all, was there? No.

Q. And if it wasn't inquired into, wasn't found out, wasn't followed through, it wasn't because of any lack of cooperation or lack of forthrightness of Mr.

Kazmierczak? A. No. Q. Because you didn't ask and you didn't inquire?

A. That's correct. Q. In spite of your outline, right? A. Yes. Q. Now, Mrs. Tony had gone through some type of computation, had she not?", and we went on to another topic. The point about this is that Mr. Pasquarella makes the point, not me, about his cooperation. Mr. Pasquarella makes the point the facts, not me, that if anything they didn't get, anything they didn't inquire into, anything they didn't want, it was them, not me or Mr. Kazmierczak, and a reasonable doubt may come not only from the evidence but from the lack of it.

Now, if I could have you recall when I was standing here and I am critical of

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myself, the Judge says, "Mr. Condon, that's window dressing", and I am sure you all can recall what I was doing at that time.

I had a special agent's handbook and we had discussed with Mr. Pasquarella his training in Washington, and just think about that for a moment, his college education, the type of education he got in college; an officer in the United States Army, a school teacher, worked for, I believe, two years as an audit technician, he said, always with figures; went down and got this training, and an interesting training; how to testify in court, and if you will pardon me for using the word, I think it is a little window dressing.

I think it is important that when somebody goes back years and comes in with no notes, that that is the intentional and proper way to create the impression of how vividly and accurately I recall this and I have no question about that and I don't complain about it so long as everybody knows and understands it and I think properly we can say this is window dressing.

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but as long as it leads to a greater understanding, I only wish I had the cash register so you can really understand what happened. It is fine. I think it is just as well that you got, if you have what might be presumed about Polish names, you got a little card and you can crank them right out with the correct pronunciation and the spelling, it is impressive and that is because of training and I only wish to God Mr. Kazmierczak had it, that he had the same ability, but these people, pardon me, pitted head to head, - what a masterful witness.

Here was a gentleman that not only had training, but even also had a handbook telling him how to do it, that even gave him, as you might recall, forms for outlines and one thing or another as to what to do and he was told to explore every detail, to follow through, to control an interview, put the taxpayer at ease, to get it all, and you know not only did he have a total opportunity to do that once, but twice, so anything that

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isn't here, anything, that it is not

Kazmierczak's fault

Now, when he was there that day, and this is the understanding that he was getting from Kazmierczak, if there was some other record that was kept at anytime he never asked him. He knew he went to Florida. Who took over, what kind of records, did they write in your gross receipts books. If not, what did they write in. When your book went to your tax preparer at anytime did you have another record and what was it and what happened to it; have you got any explanation for it, if there is something sinister about it, I want to know. That only seemed to be important when we get to trial. It wasn't important to Pasquarella at that time. Why is it so important now and it didn't mean anything to them the two and a half years he went around to different places. No suggestion that he asked for that at anytime to anyone and I sincerely hope because the Government didn't carry the day in that regard **that**

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yc we not going to hold it against Kazmierczak.

There is one thing that he was trained in, one thing. It was how to interview. Now, you remember we discussed, "Well, you could make a memorandum, you could make an affidavit, you had the forms there", and there are other ways he could record it. Of course, the interesting thing about that and I suppose the sinister thing about it is that you have an affidavit which he had the forms there and I thought it was very interesting the way he did write a substantial part, not to use that word, a part of it that he mentioned, surely more than just a line or two verbatim, and he did take it down. He did take it down or otherwise he couldn't have done it. He told you that, why he just couldn't have taken that to Mr. Kazmierczak and said "Do you want to read this over to see if it is right. You want to make an affidavit and sign it", and even put it right to him, "I am going to put you under oath and sign it right

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here and now", you had the forms right there. "Well, I guess I didn't", because he didn't know how to do it. I guess it wasn't because he didn't want to take the time to do it. I guess it isn't because he wasn't trained to do it. The only explanation I know is he didn't want to do it. He was trained to do one other thing, though, right in his handbook, that if a question can be hurtful to the Government, you don't ask it. Did that happen? Well, I don't know.

I believe, it was a remarkable set of circumstances. He knows nothing, nothing, has no other recall than what is in his memorandum and everything else is in his memorandum. There isn't a thing that was left out. Gee, wouldn't it be great if we had Mrs. Tony. When Mrs. Tony could get right up there and say, "Yes, sir, that's exactly the way it is, everything that Special Agent Pasquarella says is right on the money, he hasn't missed a point", but you know she might get at variance with him on something. That

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would be, I suppose, a calamity. It even would be a reasonable doubt, but of course the evidence comes not only from the evidence, but from the lack of evidence, and I mean by that a reasonable doubt, but the Government can immediately say to me, "Well, you can call Mrs. Tony". That's right. Then she would be my witness and I would be bound by every word she says and I couldn't cross examine her and I think as you know, that's a pretty good tool for getting out what happened and you know the Government is bound by a witness and these are the rules we live by and I have to live by and Mrs. Tony. They are bound by everything that Mrs. Tramont says.

THE COURT:

Excuse me, Mr. Condon. I did not want to interrupt because I think there is a better reason why you didn't have to call Mrs. Tony. You do not have to call Mrs. Tony because the burden is upon the Government to prove this case beyond a reasonable doubt. You are under no obligation whatever to call any

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witnesses whatever. If the jury believes that Mrs. Tony is a witness under the control of the Government and the jury finds that she has evidence to offer here which is helpful to the resolution of the case and they find that there may be no evidence here which may be harmful to the Government's case that she could offer, then they may take an adverse presumption against the Government for the Government's failure to call her, but the reason I interrupted is that it is absolutely not a correct statement of the law to say that any side is bound by the testimony of any witness and certainly under the circumstances here, it is not the law to say that the Government is bound by the testimony of Mrs. Tramont because they called her. She is the daughter of the defendant here and in assessing her testimony, you will be entitled to take into consideration that relationship. I do not say that in any way, - I do not bring this up in any way to infer that she did not testify truthfully, but I do

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think that I must make this correction.

It may be in your past, Mr. Condon, and it may be that it is the state rule that you are still bound by the testimony of a witness you call. It is not the rule here.

MR. CONDON:

Thank you very much, your Honor.

I appreciate that. I hope that you feel I don't misstate anything to you and I am sure you can say knowing with Judge Curtin here that I wouldn't have the opportunity to, so therefore, I hope I wouldn't be foolish enough to try, but at least they called her in an effort to elicit evidence that is adverse to Mr. Kazmierszak. It wasn't to help him in any way, I think we can be confident in that, but if I can return to the point about Mrs. Tony and what light she may have given us, because as Mr. Pasquarella said, she was there and as best he knew, heard everything on both occasions, but the fact that when he had his memorandum that he went back to his office and we got into quite a bit of discussion about

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this as to when he dictated that, if he dictated it, because you might recall first he said he dictated it and then he said he may have written it out in long-hand, but in any event, as you know, that a secretary puts down her initials there and as he was pointing out in his own records, they are to be carefully gone over for accuracy and context and typographical errors and there should be a date there, but this is all blank to all of that and I pose to you that that was a formidable problem for Mr. Pasquarella, and let me explain that if I can to you, and I pose to you as a central part of this case and I look forward to what Mr. Williams, when he has the opportunity to come back, may choose to tell you about it.

That is his regulation to do it in the fashion that was indicated that you know the date you went in, the date you came out, and when it was done, and for a very good reason, just so it can be said up here on the witness stand that it was

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done promptly, it was done when it was fresh, that it was his recollection, but then he had his notes, but if he took those notes and then wrote it out in longhand, he has now created another document, so now we got his notes and if he did dictate it, - did write it out in longhand, we got another document, but if he dictated it, well then there is the notes of the secretary or transcription so we got that record and we don't necessarily have to feel that that has been destroyed and we would know what he said at that particular time, but of course without anything at the bottom of it, now way to tell when, no way to tell what secretary, no way to tell anything, no way to check. They are not my words, but his words. If there was an error going from one to the other, no way to know that, no way to know it.

Now, the interesting thing about that is those records he says were destroyed. Well, why were they destroyed. They are the records, I guess, of original entry,

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I suppose maybe even like you made some notes on a shorthand book that if for some reason you never asked for, and so therefore to this point to complain about it is a strange thing and it has never been asked for by anyone. Look at the proof. Not one word said there at anytime. Where is it? Gee, you know, it is all interesting but his were destroyed. Now, that seems to be a situation that gives a little bit of a wonderment and I bring you to Page 59 on his record when he said this. We are talking about his notes and he said, - I said, "Q. Your reason for destroying them is what? A. I just destroyed them. We don't keep the notes of the interview. Q. Never? A. No. Q. Is that part of your training? A. Yes, it must have been. We do not keep the original notes. Q. Were you trained not to keep the notes? A. I don't remember being specifically told not to keep the notes, no. Q. You don't? A. No. Q. Now, if there was an error at all in the transcription from one to the other,

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there would be no way to determine that
now? A. Now, no." Well, I guess we
shouldn't get excited about that.

MR. WILLIAMS:

Your Honor, excuse me. I hate to
interrupt but apparently Mr. Condon is
continually going to refer to the trans-
cript of Mr. Pasquarella's testimony. I
have an objection to it on this basis,
that certainly it unfairly focuses on
certain portions of one witness' testimony.
I think if the jury deliberates and they
want something read back, we can make
that determination at that time.

THE COURT:

No. I believe it is not done, - we
have a time limit here on summation and
Mr. Condon has indicated before the time
that he thought was appropriate and I
thought it was not out of order in this
kind of a case. Certainly any side is
entitled to read portions of testimony
which they think especially makes a point
during summation and then, of course, the
jury in weighing that particular testimony
ought to take into account any other
evidence in the case which modifies the

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testimony in any way which you feel contradicts it, adds to it or subtracts from it, but you may continue, Mr. Condon.

MR. CONDON: Thank you very much.

THE COURT: If there are points to be made by reading the testimony, you may do it.

MR. CONDON: Now, the significant point about that is we have got no way to know except for Mrs. Tony that if there was an error, she signed the same memorandum. Again, we don't know when, but her recall, that was the total recall of Mr. Pasquarella and it created a great amount of problems regarding the gross receipts.

Now, if you can remember there was a situation at the end where Mr. Pasquarella got up on the stand and was asked by Mr. Williams, "Did it make any difference if these things were paid out of cash receipts? You didn't ask, - I remember, - you didn't ask where the \$90 for the household expenses came? No. Well, if I understand correctly, why not?" and we argued about that a little and the Judge says, "Go ahead, he can answer", and he

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said it didn't make any difference, and my question was, "Didn't make any difference to you and it made a great deal of difference", and allow me, on Page 106 at Line 11 I asked, "Mr. Pasquarella, in the event that when Mr. Kazmierczak added up what was in the cash register, if prior thereto he had taken some money out and put it in the cash box he would have less gross sales for the day, would he not? A. That's true. Q. So therefore at least from his point of view that not only when he paid what, but what box he paid it from can make a world of difference, can it not? A. A difference to what, sir? Q. A difference to the amount he put down on the gross receipts. A. Yes." Now, the point about it is that he was told by Mr. Kazmierczak the day he was there and told again the way he was doing business and knew that if it didn't go in a particular time sequence or if he made an error that the result is the upshot would be the gross receipts would be reduced. Pasquarella either it didn't

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catch with him, although it was right in his own memorandum, or he didn't pursue it as he was trained and instructed in that handbook to do and that if Mr. Kazmierczak was doing it exactly as Mr. Pasquarella was told that he was doing it, then he was making mistakes, wasn't he?

Well, we know the accountant that he has got, and there isn't a bit of evidence in this case that all his records including, - we don't know and I don't represent one way or another, but there isn't any evidence here that all his bank records didn't go down to the accountant or that they were ever asked for, never cared about in any way. We don't know, and Mr. Kazmierczak, you didn't hear one word from Mr. Pasquarella up here as to what the situation was in that regard, so now what was happening with this tax preparer. We know the quality of him is such that he, - not anybody else, - he, the first witness up here, he made a mistake, the tax preparer. He made a mistake that was unfavorable to the

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Government and favorable to Mr. Kazmierczak and as they say here in part, incorrect amount claimed in estimated tax payment and credit and they say here "Mistake in computing your self-employment income or self-employment tax or in transferring the amount on Page 1", just transfer, a mistake. See, everybody makes mistakes. We don't know how many mistakes in these transfers going back and forth were made, but I don't think anybody, including Mr. Pasquarella, wouldn't, even if he thought about it and took enough time, wouldn't say that there were a lot, a lot of mistakes. There hasn't been one criticism of the system which should be criticized because, as we previously discussed, you can't, but Gee Whiz, as we know the stipulation, you don't really think that when Mr. Williams was saying here what the Government did was give Mr. Kazmierczak a break when they went through this computation and they treated things other and different than as he says that the Internal Revenue Code

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provides for, it is just a downright mistake. They corrected certain mistakes and with the tax treatment inures to the benefit of Mr. Kazmierczak, so I guess it doesn't count in that regard, or the language again what should be done under normal tax procedures, in their own stipulation and you have got it there at Page 3, that on the third line, that under normal tax procedures. I suppose under normal tax procedures you should do a lot of things, but they didn't do it and they say so and that each one of these stipulations you can go down to where it says in 4, they say the sum was erroneously not allowed in the original computation by them, and 5, the failure to include the item for each of the years in question was a mistake made by the Internal Revenue Service. Next, the failure to include such additional business expense was the result of a mistake by the Internal Revenue Service. That the Internal Revenue Service made a mistake in allowing additional items of

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credit to the defendant. The failure to give such credit was a mistake of the Internal Revenue Service and I think Mr. Williams is really on the money. That's normal. They can make mistakes. Pasquarella can make mistakes. Mr. Kazmierczak can make mistakes. As far as the answer, you are going to say, well, he was taking \$90 a week and if you take that computation and add it up, that he would know better. Well, he didn't get a W-2. There wasn't one way at the end of the week he would know whether he had made or lost money. The end of a month, at the end of a year, he couldn't tell anything until he got that back and there wasn't bit of evidence in here which wasn't totally prepared by the tax preparer. Now, what should he have been alerted to, that next year was going to be worse, the next year was going to be better. You don't seriously think that all these computations that they made, the mistaken ones included, that he made at anytime. Cash receipts, and remember the fact that

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He had at one time the term "Expense" was made in all the time he talked to him, but asking about where the \$90 came. The \$90 came during the day from the cash register. It could become a problem if it was forgotten, if it was an error, if it wasn't marked down and all these things should have been and would have been, and I don't think anybody intends or not, but it was error prone, but, and you remember this, and it is on page 77, talking about what he pays the \$1,500, - he paid it out of cash receipts, "Q. Now, he couldn't replenish \$1,500 out of the cash receipts unless he considered the cash register the cash receipts, could he? A. That's correct.

Q. And you never asked him when he did any of these things, did you? A. When he did them? Q. The time of day. A. No. No, I didn't."

Well, as you say, replenished out of cash receipts, and that is when the box is empty. The cash receipts would have to be the cash register and if a good

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record wasn't made, well, there was an error, but the illusion that was to be created, everythin^g was paid out of here and this was never touched. They had every opportunity to check that cash register and know how well it worked, but I think more than anything else, if there wasn't a witness as to just how leaky that place was that would come in and say it was a smooth and good operation. All the employees they talk about, you don't think they weren't talked to. Not a one would come in and say, "It is an airtight, nice operation, it worked that way."

Now, he had an awful lot of things to do during the day and that obviously were done, and what difference does it make at all, at all if he has got a medical problem? Particularly flebitis, particularly varicose veins, - well, when the store is crowded and you are here and you don't want people to see your cash box and your register and a lot of them are in there, so you use the cash register

or do you walk all the way back and when you are not up to par and not up to standard, not as a matter of, or manner of sympathy, and you have other responsibilities, the ones you would normally have throughout your life, does it make you less alert, because you see what they are talking about is his state of mind. That is exactly what they are talking about and that is exactly what he was doing. There are three elements there, that there was an understatement, agreed; that he had knowledge of it, proof beyond a reasonable doubt, and that he had this specific evil intent that Judge Curtin will tell you about, not me, proved to you by circumstantial evidence beyond a reasonable doubt. Circumstantial evidence where an inference can form one way but if it is mistake prone, the other, which one is the matter of conscience and obligation you feel you are obligated to take.

You know, I want to think that good circumstantial evidence is very good and

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that's like if this was clean and someone come down and took a latent print off and could show they did it one minute after it was cleaned and that's my print, I think that's very good evidence and you can infer one minute after it was cleaned I was here. People talk about snow on the ground. You go to bed, no snow. You wake up, there is snow. You can assume it snowed while you were sleeping, or there are footprints. You can infer that somebody walked across the ground at night, but can you be certain they walked backwards or frontwards. How far can you infer? Could you infer he was wearing a gray suit? One of the finest lawyers that ever graced this courtroom wouldn't hang a yellow dog on circumstantial evidence. I don't subscribe to that, but I just think because it is not direct you can't cross examine it the way with Mr. Pasquarella, that you have to think about it very clearly.

There are a variety of things that

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will probably bore you as to that. I am sure that you can by just yourself giving some thought as to what was done, but the fashion and manner that these returns were paid out is something less than money being owed by a criminal beyond a reasonable doubt, a person of good reputation.

I think there was electrifying thing that came in here, that Copacabana. No evidence that Mr. Kazmierczak was ever at the Copacabana, and I am sure you would not at all feel that that had been proven in any way. I only ask you to think about a couple of things, that all we ask is that very fairly that you treat us and I have no reason to suspect that you won't. All we ask here is simple justice. I ask you, those that, - and I am sure there are, including all of us, including the lawyers, will carefully review the evidence and if in good conscience you have what is known as a reasonable doubt, I only ask you for no other reason than compelling evidence do

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you lose it.

In other words, in a jury room one is a majority. You have to have a unanimous verdict and I think you have to appreciate that sometimes lawyers get out in the hall and they say, Gee, you know, a case with that kind of evidence, you went and got a conviction. You say, Not me. All I did was present the evidence. The jury convicted, and you see, that is the point. They ask you to do it, and it is correctly so. It is a great system. It starts out with a citizen, ends up with a citizen, so it is not at anytime what I say and it is surely not a time when anybody else says, - nobody else will tell you what the facts are, even Judge Curtin, but it is you that as such make a determination as to the credible, believable evidence is such that can convict this gentleman beyond every reasonable doubt. That is all we ask that you consider about. Thank you very much.

THE COURT:

Mr. Williams, you may have a few

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MR. WILLIAMS:
(In Rebuttal)

First, ladies and gentlemen, very briefly with respect to the '66 return you recall Mr. Condon said why didn't I show you this or mention this to you and I think it was perhaps, and just to clarify, it says "Sign here", and the signature of the taxpayer, the date that the taxpayer signs, Mr. Condon is confused in these, I think. That is March 28, '67, and the significant thing is you will notice it is signed by the preparer of the return and dated on February 5 of 1967. That was during the period of time when Mrs. Kazmierczak, - strike that, - rather, Mrs. Tramont was still in the store making entries on all these books.

Now, the Government is not obligated to call every possible or conceivable witness that may have some information and Mr. Condon is right, there is no question we didn't call Mrs. Tony and Mr. Pasquarella said that Mrs. Tony was there on, I think it was October 7th when he saw him and she was there again

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on October 24th and as Mr. Condon said, well, perhaps Mrs. Tony could have said Yes'. That's exactly what happened, and I suggest that is why the Government didn't call Mrs. Tony. What would she have added to the case? That was what was said and that is what happened on those two dates. It is as simple as that.

Now, with respect to these memorandums that Mr. Pasquarella prepared and testified from, there is no secret, he candidly admitted it. He spent a lot of time reviewing his memorandum so that he could be prepared to testify so that he wouldn't have to constantly refer to the memorandum when I asked him a question. There is nothing wrong with that. He spent a lot of time reviewing. Two days, I think, over three days reviewing those memorandums. There is nothing wrong with that. He didn't hide them from you. Sure, he reviewed them.

Now, with regard to some questions that Mr. Condon has posed about would it

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make a difference in questions that he put to Mr. Pasquarella, would it make any difference as to what time of day Mr. Kazmierczak took money out of the cash register to pay a vendor, let's say, would it make any difference what time of day or when he took the \$90 out that he used for personal living expenses and other household expenses. Well, I think Mr. Pasquarella said no, it wouldn't make any difference or I should have said that it wouldn't make any difference or it would make a difference. There are two separate questions that were asked of him by Mr. London, but the point is this, that very simply if what Mr. Kazmierczak was doing, as I indicated to you initially, was simply at the end of the day he added up what money is in the cash register and that is his gross receipts, then the answer is sure, it would make a difference what is coming out of there, but as I indicated to you before, that's not where the gross receipts comes from. It comes from the cash register, the constant ringing up,

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what were the total sales for the day.

That's what the gross receipts were.

That's what the total income for the day is, not what is left in the cash register.

One last thing, certainly we heard very briefly from Gus Pronczyk and Dr.

Kraska about the reputation of Mr.

Kazmierczak and that they had seen him from time to time. Well, neither of them really knows what happened back in 1966, 1967 and 1968 regarding Mr.

Kazmierczak's tax returns. They know nothing about that.

That is your decision as to what happened in those years and I ask you simply again to review all the evidence, the stipulation, the testimony that you have heard, the other things that are in evidence, the gross receipts book, the expense book, and I ask you to consider the argument that I have made to you.

Thank you.

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MR. CONDON: Thank you very much.

MR. WILLIAMS: Thank you, your Honor.

THE COURT: Mr. White, would you have the jury
come up, please.

(Jury returns to the courtroom.)

THE COURT: Ladies and gentlemen, we are all
assembled now and at this stage of the
trial, it is my job to charge you on the
law to the best of my ability. It is yours
to take the law as I charge it to you,
apply it to the facts as you find them in
this case and arrive at a verdict.

There are three counts in the indictment. Each count must be taken up separately for your vote of either guilty or not guilty. On each count, before the Government can succeed, you must be convinced beyond a reasonable doubt as to that count as to the guilt of the defendant. Of course, as to any count if you are not convinced beyond a reasonable doubt as to the defendant's guilt, then you acquit.

In order to do this, when you go to

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the jury room, you will deliberate. That is, you will take all of the exhibits which are marked in evidence. You will recollect the testimony of the witnesses and apply that to the exhibits. You will talk about, in a reasonable fashion, the testimony of one witness as to how it relates to another. You will remember the cross examination if you feel it ought to be discounted and from this mix, you arrive at a verdict.

A verdict in any case in this court, in a court of the United States must be based on the relevant evidence. That is, only the evidence you heard in the court. It cannot be based upon any bias, any prejudice, sympathy for the defendant, consideration of what the sentence might be, for the sentence is for the Court to determine. In your discussion of the case, the facts and the law you should not bring up other examples, what you read in the newspaper, what you have heard in other cases, what you suspect might be fact, but which is not supported by any evidence. Certainly, none of these kind of outside

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considerations should influence your judgment.

You are concerned here only with this case, United States against Florian Kazmierczak. You are not here to set general policies of tax law one way or another. You must take the law as I charge it to you and you can only decide the case upon the facts which you have heard in this case. Many of the facts in this case through the careful attention and the cooperation of the lawyers and the litigants have been stipulated to and as we have explained before, the stipulation, Government Exhibit 10, you may consider just in the same fashion as if the individuals came in and testified under oath so this, as I, - I hate to use the word, but you may consider everything in it as evidence in the case.

There are, in this case, - it is my function from time to time to rule on certain evidence, whether certain questions should be answered, whether certain exhibits should be given to you for your attention

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and if I have said, "No, that evidence will not be considered", then you are not to consider it. Certain exhibits which have been discussed will not be sent to you. If you heard something about them, you may consider certainly what you did here, but as to the rest of the exhibits, which are not before you, you will not guess or speculate about what those materials are.

In any criminal case, any jury comes to the conclusion about the facts from two types of evidence. One is direct, what did a witness hear at a particular time, what did he see, what did he observe, what did he do. In this case, we have heard testimony from witnesses about how certain cash was received, how it was handled, how bills were paid, how checks were cashed and the like. You may consider that as direct evidence.

On the other hand, the Government argues that you should also consider circumstantial evidence from certain facts which have been received in evidence and which you consider to have been proven, and

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it is up to you in that instance to determine whether something is proven or not, you will then arrive at certain conclusions based upon the facts which have been proven and using certain inferences which are reasonable and common sense and which you would use in every day life.

Mr. Condon gave an example yesterday which is a standard example, one which I use quite often, and that is in this area snow falling and what circumstantially conclusions you could draw from that. That is a good example and I know all of you can think of other examples of circumstantial evidence, how you use it in your daily life, but it must be carefully used. The inferences to be drawn must be reasonable. Yesterday I went in a restaurant and there was one of the persons who ran the restaurant had a tan and my, - I drew circumstantially, I said, "Oh, you have been in Florida". Now, really, I had known that that person had been planning a Florida trip so under the circumstances, my conclusions were perhaps reasonable.

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On the other hand, if I just saw the person on the street and I didn't know anything about them at all, simply because a person had a tan in Buffalo in the middle of winter would not mean, necessarily, that they went to Florida. They could have had a sunlamp, they could have been ice fishing on a sunny day: they could have maybe been under some kind of medication which gave them the aspect of having a tan, so when you have circumstantial evidence if there are a number of inferences to be drawn reasonably, then you must be very careful in the way you handle it and if there are inferences which point just as reasonably, - point to guilt and there are inferences which just as reasonably point to innocence, then in a criminal case such as this, you must adopt and accept the inference that points to innocence.

In this case, I have told you before that the indictment, and the indictment will be given to you in the jury room as a guide to help you in your vote and when your foreman comes into the courtroom here, you

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will be questioned by Mr. White as to what your verdict is. Your vote must be by unanimous verdict. That is, all jurors concurring upon a result as to a particular count. The indictment will be given to you as a guide only. As I have told you before, it is absolutely no evidence of any guilt at all on the part of the defendant.

It is to make sure that he is not charged again for the same acts and it is to assist him in helping to prepare his defense, but it is no evidence whatever.

Mr. Kazmierczak, as I have explained to you before, is presumed innocent and that presumption is not overcome until you finally, if you do, are convinced beyond a reasonable doubt by the evidence and you announce your verdict in open court. If you do come into court and you have a question, do not tell me numerically how you stand until you have arrived at a unanimous verdict.

The burden in a criminal case rests with the Government at all times. It never shifts to the defendant. The Government

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must prove each element of the crime charged in a particular count beyond a reasonable doubt.

You will separately weigh and determine the evidence as to each count in the indictment. You will determine the guilt or innocence of the defendant as to each count separately.

We have talked about reasonable doubt, - what is it. Reasonable doubt is a fair doubt based upon reason and common sense and arising from the evidence. It is rarely possible to prove anything to an absolute certainty. A reasonable doubt is not a vague, speculative or imaginative doubt, but it is such a doubt as would cause prudent men to hesitate before acting in matters of importance to themselves. A defendant is never to be convicted on suspicion, conjecture or surmise. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt the defendant has the right to rely upon failure of the prosecution to establish such proof.

The law does not impose upon a defendant

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the duty of producing any evidence whatsoever. In your consideration here, you are to keep in mind that you are to consider not only the direct evidence, but all of the cross examination and all the testimony of all the witnesses and of all the exhibits which are in evidence.

In your consideration of the term "reasonable doubt", you should keep in mind that if you feel uncertain and not fully convinced that the defendant is guilty of the crime charged, and that you believe you are acting in a reasonable manner and if you believe a reasonable man or woman in any matter of like importance would hesitate to convict because of such a doubt as you have, that is a reasonable doubt to the benefit of which the defendant is entitled.

In this case, it is clear that Mr. Kazmierczak did not take the stand. That is his right not to do. There is no obligation on his part to take the stand. That flows, of course, from the general rule that the Government has the burden of

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proving guilt by evidence which they present and the defendant is not obliged to bring in evidence on his own. The failure of the defendant to take the stand may not be considered against him in any fashion. It may not be discussed by you or you may not consider it in any way in your deliberation.

In making up your mind as to the evidence in the case, you certainly will have to consider the testimony of the witnesses who have testified and how their testimony is connected one with the other, how it stands up under cross examination, how it compares with the stipulation which is in evidence and how it compares with the other exhibits which are here.

In this regard, you are the sole judges of the credibility of the witnesses and it is up to you to determine how much weight their testimony deserves. You should carefully scrutinize the testimony given, the circumstances under which each witness testified and every matter in evidence which tends to indicate whether the witness is

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worthy of belief. You may take into consideration the appearance, attitude, behavior of the witness, the interest of the witness in the outcome of the case if any, the relation of the witness to any party in the suit, the inclination of the witness to speak truthfully or not, the probability or improbability of the witness' statements and all other facts and circumstances in evidence. You may consider any conscious or unconscious bias or prejudice that the witness may have toward either side of the suit, what hope of reward, if any, the witness may feel that he or she may receive because of the outcome of the litigation. You may consider and ought to, the demeanor and manner of the witness on the stand, and as I have said to you before, certainly, you should consider the cross examination of a witness, as well as the direct examination. You should consider the witness' intelligence, motive, state of mind while on the stand. You will determine whether or not the witness had the opportunity to see and observe the matters

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to which he or she testified. You should determine whether or not, in your judgment the witness had an accurate recollection of what had occurred.

Now, inconsistencies or discrepancies in the testimony of a witness does not mean that you must discredit such testimony entirely. In weighing the effect of a discrepancy, you will always consider whether it pertains to a matter of importance or an unimportant detail and whether the discrepancy results from innocent error or intentional falsehood. It is up to you ladies and gentlemen, to use your common sense under these general rules in determining the facts from the testimony of the witnesses and the consideration of the exhibits which are in evidence.

In this case, there has been testimony of the good character of the defendant. You will recall the doctor testified and also Mr. Fronczak. These witnesses are what we call character witnesses. In this regard, you are instructed that evidence of good character may be properly considered

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by you and if believed by you, should be considered along with all the other evidence in the case in determining whether the prosecution has proven the defendant guilty beyond a reasonable doubt. Evidence of good character and reputation introduced by the defendant here, if believed by you alone without more, may create a reasonable doubt as to guilt.

You will remember as an aside, that during the course of the trial, I had instructed you from time to time about other matters, during summations, during the presentation of the evidence, during jury selection, and you are to consider the remarks I made then as part of the general charge which I am giving to you now.

I think, at this time, it may be appropriate to turn to some more particular considerations in this case. In this case, the defendant is charged with willfully and knowingly attempting to evade and defeat a portion of the income tax due and owing by him to the United States by filing a false and fraudulent income tax return

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wherein he substantially understated his income for the years in question. That is the charge that is placed here in the indictment. The years in question are 1966, 1967 and 1968. The violation, charged violation is against Title 26, Section 7201. This provides, in part, that any person who willfully attempts in any manner to evade or defeat any tax imposed, shall be guilty of an offense against the laws of the United States.

As I have told you before, it is your function to determine guilt or innocence on the charge placed. We have talked about this before, but I think it is important to say again, and we certainly understand by now, that what the attorneys say, in fact, what the Court says about the facts in the case is not evidence. The attorneys are entitled to argue and argue vigorously and fairly and point up the best points on their side of the case. That is their function and there is nothing wrong with that, but if you find that what they say is not supported by the evidence,

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then you may and ought to, under certain circumstances, not accept the arguments made in that regard. In this case, there may be some remarks made in opening statements about the background or health considerations or other considerations. If you find that this material is not supported by evidence in the case from the testimony of witnesses or exhibits, then you should simply disregard it and not consider it in your determination of the issues in this case.

There are three essential elements to be proven beyond a reasonable doubt. The first is the fact that a substantial additional amount of Federal income tax was due and owing from the accused for the calendar year in question over and above the amount of the tax which was declared or disclosed in the defendant's income tax return for the calendar year.

Secondly, the Government must prove beyond a reasonable doubt knowledge of the accused that some additional Federal income tax of a substantial amount was due

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and owing from him to the Government for the calendar year in question over and above the amount of the tax which was declared or disclosed in his income tax return for that calendar year. The second element, really, has to do with knowledge, that he knew that there was a substantial amount due and owing.

Thirdly, the Government must prove beyond a reasonable doubt, that the accused willfully attempted in some manner to evade or defeat such additional tax with the specific intent to defraud the Government of such additional tax.

There are some words which ought to be explained in a little greater language. To attempt to evade or defeat a tax involves two things. First, an intent to evade or defeat the tax, and secondly, an act willfully done in furtherance of the intent. The word "intent" contemplates that the accused had knowledge and understanding that during the calendar years 1966, 1967 and 1968, he and his wife had income which was taxable and which they were required by law

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to report, but that he nevertheless attempted to evade or defeat the tax thereon or a substantial portion thereof by willfully failing to report all of his income which he knew that he had during that particular calendar year and which he knew was his duty, under the law, to state in his return for that year.

In order to succeed, the Government must prove beyond a reasonable doubt, that the defendant willfully attempted to evade or defeat a tax due the Government.

This involves the specific intent to evade the tax and some willful commission or affirmative action by the defendant in furtherance of that intent such as, for example, a consistent pattern of understatement of income. The mere underreporting of income alone does not show willfulness, but if you find that over a period of years, there is a consistent underreporting, that may be evidence of the willfulness on the part of a defendant. This may include evidence of underreporting in prior years. You may acquit the defendant in one year,

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but you may consider the evidence in the following years if you find that it is pertinent to the issue.

An act or failure to act is willfully done if done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done. That is, with bad purpose either to disobey or disregard the law.

As I have told you before, the arguments of counsel are not evidence in the case. However, in this case, you can consider the stipulation, Exhibit 10, which is in evidence, and, of course, in pointing out part of it, does not mean that all of it is not important and it is all going to be there for you to read, but the stipulation shows that the defendant reported he had a taxable income in 1966 of \$6,124.49 when he actually had a taxable income of \$12,765.97. For the year 1967, the stipulation indicates that while he reported an income of \$4,057.99, he had an actual

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taxable income of \$21,320.01, and in 1968, when he reported a taxable income of \$3,650.56, he had an actual taxable income of \$12,175.49.

The stipulation further reflects, among other things, that the defendant owed an additional income tax in 1966 of \$1,427.84 in 1967 of \$3,811.17 and in 1968, of \$1,813.63.

If you find, beyond a reasonable doubt, from the evidence in the case, that a fraudulent return was filed with the specific intent on the part of the accused to evade or to defeat a substantial part of the tax lawfully due from him and that this was done willfully, the offense was complete as soon as the fraudulent return was willfully filed.

A fraudulent tax return is one that is false and known to be false by the person making it or causing it to be made and is willfully filed with the intent to deceive.

The proof in the case need not show an evasion of all the tax alleged in the indictment. You will note that the

figures in the indictment are different from the figures in the stipulation. That does not defeat the Government's case, but what the evidence in the case must establish beyond a reasonable doubt is that the accused willfully attempted to evade or defeat some substantial portion of the tax alleged as charged. Whether any of these things occurred, whether the amount is substantial or not substantial, these are all questions for you the jury to determine.

As I have explained to you before, each year must be considered separately.

You may also consider the conduct of a defendant including statements knowingly made by him upon being interviewed by the special agent or the agent in the case. Whatever he said to the agent at that time if you find was voluntarily made may be considered by you in determining whether or not there was a consciousness of guilt.

In this case, there is evidence that an individual by the name of Joseph Ciapkzik made out the defendant's returns

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for the years 1966 and 1967 and another individual by the name of M. Kuzczko made out the defendant's return for the year 1968. It is not a defense that another person made out the returns when the taxpayer knew or perhaps should have known that the return was false.

Some of these things I have discussed with you perhaps need a little further word of explanation. In doing this, I probably may repeat some of the things that I have told you already, but it is important that I do my best to try to explain to you as well as possible the things which you must consider in this case.

To return to your general duties for a minute, it is clear that you are to perform your duties as jurors without bias or prejudice as to any party. You may not be governed by sympathy, prejudice or public opinion. The parties in this case are entitled to have your impartial and careful consideration of all the evidence in the case and are entitled to expect that you will attempt to follow the law and reach

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your verdict based upon the law and the facts as well as you are able.

The meaning of the term "substantial" in a case such as this depends upon the facts, circumstances and conditions shown by the evidence in this particular case.

If you find that some of the unreported income came about through error, oversight, may be reasonably considered to be inconsequential or perhaps if you find that it was through neglect, carelessness, poor handling of details, then, of course, this would not be a showing of substantiality.

You may consider the background of the defendant. You may consider all of these things in determining whether or not the portion not declared here was substantial and whether the acts were done willfully or not willfully.

We are not here to determine any civil liability. That is a separate proceeding. We are not here to determine the exact amount. That is something that will be handled at some other time and some other place. We are here only to determine

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guilt or innocence of the defendant.

The point in time which we are concerned in is at the time that the return was filed. That is the time when you must determine whether or not the defendant had the specific intent to evade or defeat the tax.

If you find that the defendant believed that the return was true and accurate when filed, he cannot be held responsible criminally, even though at a later date, facts come to his attention which he did not have access to at the time of filing the return which indicate that the return was not true and accurate.

I have just said this, but perhaps I should say it again. The defendant's acts in connection with the income tax return are not willful if they were done through inadvertence, carelessness, honest misunderstanding of what was required or as a result of his good faith reliance on a consultant or accountant to whom he gave all the information necessary to prepare a correct return.

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To determine what the intent of the defendant was in this case, it is always difficult to look into, - well, it is impossible really, to look into the mind of any individual so that we, in this case, just as in any other case, can determine, must determine what the intent of an individual was from what he did or from what he failed to do. It is not necessary to show that there was direct evidence of willfulness. You are constantly called upon in your own life to decide from the actions and omissions of other people what their intentions and purposes are. In a great many instances, what a person does or does not do speaks just as clearly as if the person had written out what his intentions were. You are permitted to consider in determining intent, and these are only examples, - I am not saying any of this was found because it is up to you to determine the evidence. If you find, for example, the taxpayer caused certain items of personal expense to be paid and deducted as expense of the business, you

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may consider this as a factor in determining intent and willfulness. If you find that the defendant gave a knowing false statement about a material matter to one of the agents during the investigation, you may take that into consideration as to referring back to what his intent was when the return was filed.

You may consider, and this is one of the Government's arguments, and whether or not it is in the case or is not in the case, it is for you to determine, but you can, for example, if the taxpayer kept a double set of books, then you may consider that as part of the intent to evade. For example, if a defendant made false entries in the books or altered invoices, concealed assets, covered up sources of income, used method of keeping track or bookkeeping and accounting which clearly would lead to underreporting of income, handling ones affairs to avoid the making of usual records, these are examples of things which you could consider as bearing upon the intent of the defendant.

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In other words, how did the defendant in this case conduct his affairs. Were they done in such a manner and willfully done so that all of his income would not be carefully reported or was it just careless and negligent. These are considerations for your determination.

It is evidence that "taxable year" in this case means calendar year starting from January 1st and continuing to December 31st of the following year and as we know, the required return is to be filed on or about the 15th of April in the year following.

If a person acts in good faith and believes he has paid all the taxes he owes, he cannot be guilty of criminal intent to evade the tax, but if he acts without reasonable ground for belief that his conduct is lawful, it is for you to determine whether he acted in good faith or whether he willfully intended to evade the tax.

The issue of intent is whether the defendant willfully intended to evade or defeat the tax, that is one which you must determine

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from a consideration of all the evidence
in the case.

In this case, the evidence, and as
you recall, that Mr. Kazmierczak had other
people prepare his returns for the years
in question and in that regard, if you find
that he provided the tax preparers all
full information with relation to his
taxable income and expenses during the
year in question and the defendant then
adopted, signed and filed his tax returns
without having reason to believe that they
were not correct, if he thought he was
acting in good faith, of course, you would
not be able to find him guilty. On the
other hand, if he did not provide, you
find, all the information to the tax pre-
parers and he did that willfully, then
the fact that he had someone prepare the
tax does not absolve him from liability in
a case such as this. If he knew when he
signed it that the return was not correct
and substantially understated the tax
liability, then you are not required to
find the defendant not guilty simply because

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he did not prepare his return himself, but here, the defendant had the return prepared by another.

The fact that the defendant's signature appeared at the bottom of the tax return is *prima facie* evidence that he knew the contents of the return. If there was no other evidence as to the issue of knowledge, the signatures on the tax returns would be sufficient to establish that the signer had knowledge of the contents of the return. However, you may consider on that question, any other evidence to determine whether or not he did have knowledge of whether the information was correct.

As I have said to you, the burden is on the Government to establish guilt beyond a reasonable doubt. They must show that the defendant in this case acted willfully and knowingly with a specific intent to evade the income tax obligation. That means proof of a conscious, deliberate, purposeful act or omission as opposed to an unconscious, unwilling, negligent or mistaken one. It is further important that

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the Government establish intent by evidence independent of the understatement of income. The mere fact that there may be an understatement and it may be substantial is not sufficient to find the defendant guilty on those facts alone.

As I have explained to you before, however, if you find a consistent pattern of underreporting then you can consider that as part of your determination of intent.

I have already told you, ladies and gentlemen, that your verdict must be, or your consideration must be separate on each count. Your verdict must be unanimous on each count and certainly, as I have explained again and again, you may not find the defendant guilty in this case unless you are convinced as to the particular count involved that the Government has proven its case beyond a reasonable doubt.

At this time, I will ask you to step into the corridor until I listen to the requests to charge, any further requests made by the lawyers and exceptions to the

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charge as well.

(Jury escorted from the courtroom.)

THE COURT: Mr. Williams.

MR. WILLIAMS: I have no requests or no exceptions.

I think all points were fairly and adequately covered.

THE COURT: Mr. Condon.

MR. CONDON: If it please the Court, I don't know if it makes any material difference at all. I just point out to the Court I believe you indicated that Mr. Ciapkicik prepared the income tax returns for the years '67 and '66, and Kuzczko '68.

THE COURT: It was the other way around?

MR. CONDON: It was the other way around.

MR. WILLIAMS: It was, your Honor. I noticed that, but I don't think it is that significant.

THE COURT: I will tell them again it is up to them to determine. I will tell them that you called to my attention that I misstated it and I have it reversed.

MR. WILLIAMS: That is due to my mistake.

MR. CONDON: Your Honor, I respectfully request

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that the jury be instructed a reasonable doubt can come not only from the evidence, but from the lack of it.

THE COURT: Yes. I think I have covered that.

MR. WILLIAMS: I made a specific note of it that it was covered earlier in the charge.

MR. CONDON: I cannot default anyone, but I was particularly attuned to it.

THE COURT: Maybe I did not say it in your exact language, Mr. Condon, but I believe I have covered that sufficiently.

MR. CONDON: And, your Honor, I most respectfully except in this instance in this case with this fact, that consistent pattern of under-reporting is not indication of willfulness. I except to that being charged.

THE COURT: All right, Mr. Condon. Mr. Anderson, will you have the jury come back, please.

(Jury returns to the courtroom.)

THE COURT: Ladies and gentlemen, the attorneys have called to my attention that when I discussed who prepared the tax returns for the years 1966, 1967 and 1968, I

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mentioned the two names and I had the names backwards. This, of course, again is for you to determine one way or the other, and as far as materiality of it, that is for you to determine as well.

Would the marshals step up, please, and be sworn.

(Two Deputy United States Marshals sworn as custodians of the jury.)

THE COURT: Mr. Ambrusco, I want to thank you for your service here. We can now continue with a jury of twelve only. You are discharged from further consideration in this case with the thanks of the Court and we will be in touch with you again soon about your next time. We have other arrangements next week for a jury to come in so you will not be called next week. We may ask you to come in the following week.

(Alternate juror excused.)

THE COURT: Thank you. Ladies and gentlemen,

* * * * *

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PROCEEDINGS: February 19, 1976, 3:21 p.m.

APPEARANCES: As before noted.

(Defendant present.)

(Jury present.)

THE CLERK: Jury kindly answer to your name.

(Jury roll called. All twelve jurors present.)

THE COURT: Will the foreman please rise.

Members of the jury, have you agreed upon your verdict?

THE FOREMAN OF THE JURY: We have.

THE CLERK: What is your verdict on Count 1 of the indictment?

THE FOREMAN: Not guilty.

THE CLERK: What is your verdict on Count 2?

THE FOREMAN: Guilty.

THE CLERK: Pardon?

THE FOREMAN: Guilty.

THE CLERK: And Count 3?

THE FOREMAN: Guilty.

THE CLERK: Members of the jury, kindly listen as the Court records your verdict. You

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find the defendant Florian Kazmierczak
not guilty on Count 1; guilty on Count 2
and guilty on Count 3 of the indictment?

THE FOREMAN: Yes, sir.

THE CLERK: Is your verdict as the Court has
recorded it?

THE FOREMAN: Yes.

THE CLERK: So say you all?

THE JURY: Yes.

THE COURT: Mr. Condon, do you want the jury
polled?

MR. CONDON: If it please your Honor.

THE CLERK: Members of the jury, if your verdict
is as the Court has recorded it, kindly
answer "yes" when your name is called.

(Jury polled. All twelve jurors
responded to the question of the Clerk
in the affirmative.)

* * * * *

DECISION AND ORDER, 7-2-76.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

-vs-

CR-1973-160

FLORIAN KAZMIERCZAK,

Defendant

APPEARANCES: RICHARD J. ARCARA, ESQ., United States Attorney (ROGER P. WILLIAMS, ESQ., of Counsel), Buffalo, New York, for the Government.

CONDON, KLOCKE, ANGE, GERVASE & SEDITA (JOHN W. CONDON, JR., ESQ. & JOHN D. KLOCKE, ESQ., of Counsel), Buffalo, New York, for the Defendant.

After a jury trial, the defendant was convicted on two counts of a three-count indictment charging income tax evasion for the years 1966, 1967 and 1968. The jury found the defendant not guilty for the year 1966, and guilty for 1967 and 1968. Following the jury verdict, the defendant moved for a judgment of acquittal and for a new trial pursuant to the Federal Rules of Criminal Procedure. The time to argue this motion was extended and the defendant and the Government have supplied the court with briefs.

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In urging his motion, the defendant relies upon four main points: First, that the evidence was insufficient to sustain a conviction; secondly, that during cross-examination defense counsel was improperly prevented from questioning Special Agent Michael Pasquarella and that the court's comments during cross-examination seriously prejudiced defendant's case; third, that the court improperly charged the jury on the question of under-reporting of income and failed to give a charge on reasonable doubt as requested by the defendant; fourth, that the defendant was prejudiced because of remarks made by the Government's attorney during summation.

Before trial, the parties stipulated that for the year 1967 the defendant claimed a tax due in the amount of \$631.02, while in fact there was an additional tax due of \$3,811.17; for the year 1968 the defendant claimed a tax due of \$602.79, while in fact there was an additional tax of \$1,813.63. The evidence showed that defendant admitted he spent more in cash than the amounts he reported as taxable income for the years 1967 and 1968. From these facts alone, the jury could make the reasonable inference

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that he knew he had greater income than he reported during these two years. There was other evidence sufficient for the jury to determine that he willfully understated his income. The defendant, a small delicatessen store operator, used a cash register to record sales in his store. However, there was also a box which was used to keep money for cashing checks. At times these funds became intermingled. From the evidence, it was reasonable to infer that the books did not correctly reflect the gross income each day. Sometimes the cash register tape was used to determine the amount of gross receipts but, at other times, it was not. Quite often the receipts were calculated by counting the amount of money in the register. This did not accurately reflect gross receipts because cash register monies were used to pay vendors, pay the help and sometimes to cash payroll checks. There was also evidence before the jury that there were two sets of books used by the defendant in keeping his records. A review of the defendant's checking account and savings account records showed a substantial difference between the amount deposited in the bank and the amount recorded in the defendant's

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books. Considering the evidence presented in a light most favorable to the Government, it is clear that a reasonable juror could reasonably conclude guilt beyond a reasonable doubt. United States v. Brewer, 482 F.2d 117 (2d Cir. 1973); United States v. Fahey, 510 F.2d 302 (2d Cir. 1974). For the years 1967 and 1968, the evidence showed that there was a substantial additional amount of federal income tax due and owing, and that the defendant had knowledge that there was an additional tax due and that he willfully attempted to evade or defeat the additional tax.

During cross-examination of Special Agent Michael Pasquarella, defense counsel questioned the agent extensively about what steps he took to prepare for the interview of the defendant, what records he consulted, what his training was beforehand, whether he made an outline of the questions to be asked of the defendant, his understanding of the memorandum of instructions given to agents, what his contacts were with the revenue agent before the interview, how he made notes during the interview, what happened to the notes after the interview, whether he had any training in the use of weapons, what

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other training he received, his prior educational background and whether he chose not to ask Mr. Kazmierczak certain questions. Finally, at page 65 of the Michael Pasquarella transcript [hereinafter referred to as P.Tr.], after eliciting from Mr. Pasquarella that he had taken affidavits from other people, he was asked:

Q. And you could have that day, if you had chosen, had Mr. and Mrs. Kazmierczak sign an affidavit?

There was no objection, but the court said:

Mr. Condon, the agent can do many things. If we were here and question him about all the things he didn't do, we would be here a long, long, long time and not develop any information which would be useful, so let us zero in, please, on what he did do.
(P.Tr. at 65).

After that, the defense counsel questioned the agent about his interview of Mr. Kazmierczak. At P.Tr. 69-70, the court overruled a Government objection to a question put by defense counsel concerning the content of the agent's memorandum. After questioning the agent in detail about his interview, defense counsel at P.Tr. 79 and 80 asked the agent about the purpose of the questions, whether it was the purpose of the agent "to find out if there was an

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evil intent to cheat the Government . . ." (P.Tr. at 79);

and whether the actions of the defendant were willful.

Finally, defense counsel asked the agent:

Q. Well, you know it would have to be something that was unjustifiable, without excuse, stubbornly and obstinately and perversely made? (P.Tr. at 80).

The court said:

Wait a minute. That is a question of law. Disregard the question. That is not a correct statement of the law.

The defense counsel then said:

Forgive me, your Honor. I apologize.

The court then said:

Can we get to the facts, . . .? A lot of this you know and I believe, and I am going to state it direct, bluntly and candidly, it is window dressing. Mr. Pasquarella has conducted an investigation and you are entitled to question him about what he did and you have, but as far as all these adjectives and so forth, it does not help us.

(P.Tr. at 80-81).

The court then directed the examiner to continue with his questioning. The cross-examination continued without further objection or interruption. Citing United States v.

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Murdock, 290 U.S. 369, 394 (1933), defense counsel argues that the Supreme Court used these very terms to describe what is willful. He claims that since he was prevented from asking the agent this question, his cross-examination was curtailed. Although the Supreme Court used this language as part of a discussion of the meaning of the word "willful," that does not mean that it is a proper question on cross-examination. The phrase was obviously taken out of context and could not aid the jury in evaluating Mr. Pasquarella's direct testimony or the work performed during his investigation. A reading of the cross-examination reveals that there were very few objections made by Government counsel to any of it and only two occasions when the court interrupted. In neither instance did defense counsel request an opportunity to explain the reason for the questioning. The direction to defense counsel to ask the agent what he did do, rather than what he did not do, under the circumstances was not improper, and whether or not the agent attempted to obtain an affidavit from Mr. Kazmierczak is beside the point. United States v. Lehman, 468 F.2d 93, 105 (7th Cir. 1972). Counsel continued to question the agent about his investigation at

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length, without further interruption. Under the circumstances, neither the rulings by the court nor comments interfered with the cross-examination.

The defense objects to that portion of the court's charge in which there was a discussion of under-reporting of income. On several occasions the court made clear that the mere understatement of income was not sufficient to show willfulness and that it was necessary for the Government to establish intent by evidence independent of the understatement of income. It appears that the charge followed the letter and spirit of United States v. Coblenz, 453 F.2d 503, 505 (2d Cir. 1972), cert. denied, 406 U.S. 917; United States v. Procaro, 356 F.2d 614 (2d Cir. 1966), cert. denied, 384 U.S. 1002.

The defense also objected to the court's failure to charge on reasonable doubt that the "reasonable doubt comes not only from the evidence in the case but from lack of it." The court did not charge in the specific manner requested, but did charge the jury in the following language:

Since the burden is upon the prosecution to prove the accused guilty beyond

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a reasonable doubt the defendant has the right to rely upon failure of the prosecution to establish such proof. Charge Transcript [hereinafter referred to as C.Tr.] at 16.

Furthermore, during jury selection, trial and the formal charge, the jury was given frequent admonition about its duty not to convict unless convinced beyond a reasonable doubt.

During summation, Government counsel stated that Lois Tramont, daughter of the defendant, testified that she saw entries in a temporary grocery sheet book many times. In fact, her testimony was that she saw prior entries at least once and maybe more than once. Government counsel did not purposely misstate the evidence and the error is not sufficient to require a new trial.

Mrs. Tony, a Revenue Agent, was not called as a witness by the Government. During defense counsel's summation, defense counsel commented that if the Government had called Mrs. Tony, she could have supported the testimony of Agent Pasquarella. During rebuttal, the Government responded by pointing out that the Government was not obliged to call every possible witness, and then went on to say:

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. . . as Mr. Condon said, well, perhaps Mrs. Tony could have said "Yes". That's exactly what happened, and I suggest that is why the Government didn't call Mrs. Tony.

Rebuttal statement of Assistant U.S. Attorney taken from Transcript of Closing Argument of John W. Condon, Jr. [hereinafter referred to as J.C.Tr.] at 53.

In a sense, the Government simply parroted the remarks made by defense counsel in his summation. The remark may be considered as simply a fair response to defense argument. Even if considered as injecting the prosecutor's personal belief into the trial, nevertheless, neither the remark about Mrs. Tony nor the complained discussion of Mrs. Tramont's viewing of the books was objected to. Furthermore, following defense counsel's comment about Mrs. Tony that the defense did not have to call her, the court reminded the jury:

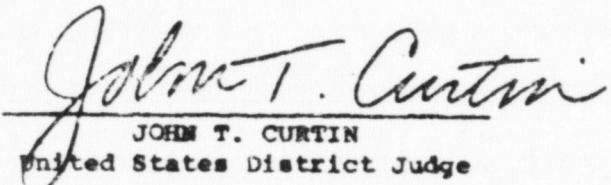
You do not have to call Mrs. Tony because the burden is upon the Government to prove this case beyond a reasonable doubt. You are under no obligation whatever to call any witnesses whatever. If the jury believes that Mrs. Tony is a witness under the control of the Government and the jury finds that she has evidence to offer here which is helpful to the resolution of the case and they find that there may be any evidence here which may be harmful to the Government's case that she could

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offer, then they may take an adverse presumption against the Government for the Government's failure to call her
J.C.Tr. at 32-33.

None of the points made by defense counsel are sufficient to require a new trial or to warrant the granting of a judgment of acquittal. The motions of defendant, in all respects, are denied.

So ordered.



JOHN T. CURTIN
United States District Judge

DATED: July 2, 1976

EXHIBIT - Stipulation with Schedule attached.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :
Plaintiff : CR NO. 1973-160

-v- :
FLORIAN KAZMIERCZAK, : STIPULATION

Defendant :
: :
IT IS HEREBY STIPULATED, by and between the parties
hereto, the United States of America, by its attorney,
Richard J. Arcara, United States Attorney in and for the
Western District of New York, Roger P. Williams, Assistant
United States Attorney, of counsel, and Florian Kazmierczak,
the defendant herein, and his attorneys, Condon, Klocke,
Ange, Gervase and Sedita, that:

1. Schedule I attached hereto and made a part
hereof accurately reflects the defendant's state of affairs
for each of the years in question, 1966, 1967 and 1968 after
the Internal Revenue Service corrected certain mistakes in
the computations which are reflected in paragraphs 2 through
6 following.

2. The attached Schedule I reflects a business
expense paid by check in the year 1967 of \$120.00 which
check represents payment for the purchase of a business
adding machine, which tax treatment inures to the benefit
of the defendant, whereas, under normal tax procedures,
such item should have been capitalized and depreciated over
the term of its useful life, to wit, ten years.

EXHIBIT *Stipulation with Schedule attached*

3. The attached Schedule I does not include for the years 1967 and 1968 the gross rent received in the amount of \$540.00. That under normal tax procedures, such sum of money should have been included as additional gross income to the defendant for the two years in question; however, since the offsetting expenses attributable to that gross rent was such that the additional income was minimal, the Internal Revenue Service decided not to include that sum of money as additional income to the defendant.

4. Schedule I reflects an allowance to the defendant of the sum of \$76.64 received in the year 1966, which sum represents an allowance to the defendant for his State Income Tax refund for the year 1965; that said sum was erroneously not allowed in the original computations made by the Internal Revenue Service occasioned by the fact that it did not take into account the fact that the defendant had received a New York State Tax refund for that year.

5. The attached Schedule I also reflects, for each of the years in question, a reduction of cash business expenses in the sum of \$600.00 for merchandise personally used by the defendant. That failure to include said item for each of the years in question was a mistake made by the Internal Revenue Service. That attached Schedule I reflects an additional business expense of the defendant in the sum of \$222.67 representing real property taxes allocable to the business premises for the year 1968; that failure to include such additional business expense was the result of a mistake by the Internal Revenue Service in its original computations.

EXHIBIT - *Stipulation with Schedule attached*

6. The attached Schedule I also reflects a reduction in the credit to the defendant of \$74.26 for the year 1966 and \$66.02 for the year 1967, which credits reflect payments received from defendant's customers for utility bills; that the Internal Revenue Service made a mistake in allowing those additional items of credit to the defendant. That Schedule I also reflects credits to the taxpayer in the amount of \$780.00 for the year 1966 and \$1,350.00 for the year 1967; that such credits represent additional sources of non-business income or the years in question and failure to give such credit was a mistake by the Internal Revenue Service in its original computations.

7. As more particularly appears from Schedule I the defendant's taxable income for the year 1966 was \$12,765.97; for the year 1967, \$21,320.01; and for the year 1968, \$12,175.49.

8. For each of the years in question the following additional income tax was due and owing from the defendant to the Internal Revenue Service: for 1966, \$1,427.84; for 1967, \$3,811.17; and for 1968, \$1,813.63.

9. The tax returns, Forms 1040, for the years 1966 through 1968, inclusive, marked as Government's Exhibit 17 through 20, 48 and 49, are true and accurate copies of the defendant's returns as filed with the North-Atlantic Regional Center of the Internal Revenue Service, Andover, Massachusetts.

EXHIBIT — *Stipulation with Schedule attached.*

10. The defendant made the following total deposits to his account number 784-70259-4 with the Marine Midland Bank - Western:

1966	-	\$162,994.02
1967	-	183,066.80
1968	-	187,856.30

11. Said deposits consisted of the following transactions for each of the years in question:

For the year 1966:

- a. 130 separate deposit slips.
- b. 1,601 checks deposited.
- c. \$100.00 worth of food coupons redeemed.
- d. \$394.00 in Canadian checks deposited and discounted.
- e. 62 separate items of cash deposits of various amounts.
- f. A total of \$69,850.00 in currency deposited.
- g. A total of \$93,355.39 in checks negotiated and deposited.

For the year 1967:

- a. 123 separate deposit slips.
- b. 1,864 checks deposited.
- c. 47 separate items of cash deposits in various amounts.
- d. \$76,210.00 in currency deposited.
- e. \$107,473 in checks negotiated and deposited.

EXHIBIT - *Stipulation with Schedule attached*

For the year 1968:

- a. 125 separate deposits.
- b. 2,043 separate checks deposited.
- c. 30 separate items of cash deposits of various amounts.
- d. \$67,440.00 in currency deposited.
- e. \$118,966.32 in checks negotiated and deposited.

12. The total payments to utility companies by the defendant for customers for each of the years in question were as follows:

1966	-	\$67,665.87
1967	-	\$72,689.20
1968	-	\$82,319.87

13. For each such utility bill accepted, the defendant collected the money from his customers, receipted the bill, deposited the money in his bank account, segregated the bills, watched for due dates, totaled the bills, drew checks and forwarded the bills and the money to three separate utility companies on three different due dates for the following number of bills for each year involved.

1966	-	4,066
1967	-	4,367
1968	-	4,941

14. The defendant is 62 years of age. That his formal education terminated in the sixth grade. He owns his own delicatessen store which he operates with his wife at 977 Sycamore Street, Buffalo, New York. During the years

EXHIBIT *Stipulation with Schedule attached.*

in question he had only a simplified single entry journal for daily receipts and a bound accounts payable journal as the books and records for his business.

15. When the Internal Revenue Service commenced its investigation, and throughout the investigation, he cooperated fully by showing his bank books, check books, deposit receipts, cancelled checks, cash receipts journal, accounts payable ledger books, invoices, tax returns, payroll tax reports, books and records, and by answering all questions and inquiries and disclosing all assets which were readily available and which were used by the Internal Revenue Service in making its computations which formed the basis for Schedule I attached hereto. He also permitted the Internal Revenue Service to enter his place of business and residence.

16. The defendant has not been charged with any other crime nor has he ever been convicted of a crime.

DATED: Buffalo, New York, February _____, 1976.

RICHARD J. ARCARA
United States Attorney
Western District of New York
Office and Post Office Address
502 United States Courthouse
Buffalo, New York 14202

BY:

ROGER P. WILLIAMS
Assistant United States Attorney

CONDON, KLOCKE, ANGE, GERVASE & SEDITA
Attorneys for Defendant

BY:

JOHN W. CONDON, JR., ESQ.

EXHIBIT - Stipulation with Schedule attached
 SCHEDULE ON STATEMENT OF BUSINESS INCOME
 BY USE OF THE BANK DEPOSITS plus CASH
 EXPENDITURES Method of Determining Income

	1966	1967	1968
Marine Midland # 784-70259-4	\$ 16290402	\$ 1839463	\$ 18785630
" " # 784-51136-4	80000	47500	-0-
" 784-45138-9	-0-	-0-	1050945
" " Savings CERTIFICATE # 3137257	1000000	1000000	-0-
Buffalo Savings BANK # 820310	-0-	3000	-0-
" " " # 804622	-0-	3000	-0-
" " " # 886012	-0-	10000	29500
" " " # 862217	32500	3000	-0-
Erie County Savings BK # 796345	152000	146082	143500
" " " # B-103417	909209	-0-	-0-
Total Deposits	\$ 18473711	\$ 19519762	\$ 20004670
ADD: Cash Expenditures (see attachment #1)	213426	2164228	2143487
Total Deposits + Cash Expenditures	\$ 20601977	\$ 21622490	\$ 22153562
LESS: Non Business Income Deposits + Items			
Payments to Utility Companies	6766587	7268920	8231987
FEDERAL TAX REFUND	1760	-0-	60487
STATE TAX REFUND	7604	-0-	8750
SALE TAX Deposited	115241	128234	135816
GROSS DIVIDENDS	18431	21783	42493
LIFE INSURANCE PROCEEDS	-0-	19592	-0-
Interest on Savings CERTIFICATES Deposited	-0-	47500	50945
GROSS RENTAL INCOME	-0-	54000	54000
INHERITANCE - JACOB KAZMIERCZAK	909209	-0-	-0-
INHERITANCE - KAROLINA SLOWINSKI	-0-	40000	-0-
CASH DEPOSITS to SAVINGS ACCOUNTS	86500	10000	-0-
BANK TRANSFERS	1172000	1136500	1173000
UNIDENTIFIED Debits to Checking Acct	26137	11064	4924
LOAN REPAYMENT - Balances & Pre-empt	35300	58900	63300
Checksto Cash	78000	135000	-0-
CORRECTED Business Receipts	\$ 11382940	\$ 12723007	\$ 1232310
Less: Cost of Goods Sold	9018043	9504022	9970478
OTHER BUSINESS EXPENSES	1052046	1090020	1241895
CORRECTED NET PROFIT - BUSINESS	\$ 1313851	\$ 2121965	\$ 1115217
ADD: OTHER INCOME			
Interest Income	191397	252615	301546
Dividends - NET	-0-	1783	22493
NY STATE TAX REFUND	-0-	-0-	8750
CORRECTED ADJUSTED Gross INCOME	1508747	2384263	1448006
Less: ITEMIZED DEDUCTIONS	109151	132362	110457
PERSONAL EXEMPTIONS	120000	120200	120000
CORRECTED TAXABLE INCOME	1221597	2132001	1217549
TAXABLE INCOME REPORTED	612449	405797	365766
INCREASE IN TAXABLE INCOME	\$ 66478	\$ 1726292	\$ 551793

10/27/75

SCHEDULE I

EXHIBIT - Stipulation with Schedule attached

COMPUTATION OF CASH EXPENDITURES

PARTICULARS	1966	1967	1968
1. Merchandise Purchased per Return	\$ 6131443	\$ 7603022	\$ 10124118
2. OTHER BUSINESS EXPENSES per Return	1052046	1090529	1241795
3. TOTAL BUSINESS EXPENSES	10183489	10693042	11366043
4. LESS: DEPRECIATION per Return	107077	109502	102276
5. ACTUAL BUSINESS EXPENSES PAID, less	10060512	10592540	11263767
6. LESS: BUSINESS EXPENSE PAID BY CHECK	8214246	8896312	9587753
7. BUSINESS EXPENSE PAID BY CASH	1616266	1696228	1675987
8. Add: CASH LIVING EXPENSES @ 90% wt.	468000	468000	468000
9. TOTAL CASH EXPENDITURES	\$ 2134766	\$ 2164228	\$ 2143987
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Affidavit of Service

Monroe County's
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Rochester, New York 14608
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Johnson D. Hay, Publisher
Russell D. Hay/Board Chairman

October 4, 1976

Re: United States of America v Kazmierczak

State of New York)
County of Monroe) ss.
City of Rochester)

Johnson D. Hay

Being duly sworn, deposes and says: That he is associated with The Daily Record Corporation of Rochester, New York, and is over twenty-one years of age

That at the request of
Condon, Klocke, Ange, Gervase & Sedita

Attorney(s) for
Appellant

On October 4, 1976
(s)he personally served three (3) copies of the printed Record Brief Appendix
of the above entitled case addressed to:

RICHARD J. ARCARA, ESQ.
United States Attorney for the Western Dist.
of New York
68 Court St.
Buffalo, NY 14202

By depositing true copies of the same securely wrapped in a postpaid wrapper in a Post Office maintained by the United States Government in the City of Rochester, New York.

By hand delivery

Sworn to before me this 4th day of October 1976

Virginia Nelson.....
Notary Public
Commissioner of Deeds

The Daily Record